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Part III

Department of Commerce

International Trade Administration

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[A–449–804]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars From Latvia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Keir Whitson or Gabriel Adler at (202) 482–1777 or (202) 482–3813, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Preliminary Determination

We preliminarily determine that steel concrete reinforcing bars (rebar) from Latvia are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on July 18, 2000.[1] *See Initiation of Antidumping Duty Investigations: Steel Concrete Reinforcing Bars from Austria, Belarus, Indonesia, Japan, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, the Russian Federation, Ukraine, and Venezuela,* 65 FR 45754 (July 25, 2000) (*Initiation Notice*). Since the initiation of this investigation, the following events have occurred.

On August 14, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that a regional industry in the United States is materially injured or threatened with material injury by reason of imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine of certain steel concrete reinforcing bars. *See Certain Steel Concrete Reinforcing Bars from Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela,* 65 FR 51329 (August 23, 2000). With respect to subject imports from Austria, Russia, and Venezuela, the ITC determined that imports from these countries during the period of investigation (POI) were negligible and, therefore, these investigations were terminated. The ITC also determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, by reason of subject imports from Japan. *Id.*

On August 18, 2000, the Department issued antidumping questionnaires to the only producer/exporter of subject merchandise in Latvia, Liepajas Metalurgs (LM).[2]

As of the date of initiation of this investigation, Latvia was still considered a non-market economy (NME) country. On August 24, 2000, the Department received a letter from Latvia's Ministry of Foreign Affairs requesting that the Department revoke the NME status of Latvia under section 771(18)(A) of the Act. After a thorough examination of all relevant information available to the Department, we have revoked Latvia's NME status under section 771(18)(A) of the Act. *See Memorandum from Holly A. Kuga to Troy H. Cribb: Non-Market Economy Status Revocation* (January 12, 2001). This preliminary determination is therefore based on information contained in the market economy questionnaire responses submitted by LM.

On November 9, 2000, the petitioner requested a postponement of the preliminary determinations in all concurrent rebar investigations. On November 21, 2000, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until January 16, 2001. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, and Ukraine*, 65 FR 69909 (November 21, 2000).

Postponement of the Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On January 5, 2001, LM requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. LM made a separate request to extend the provisional measures to not more than six months. Accordingly, since we have made an affirmative preliminary determination, and LM is the sole producer of the subject merchandise in Latvia, we have postponed the final determination for Latvia until not later than 135 days after the date of the publication of the preliminary determination.

Period of Investigation

The POI is April 1, 1999, through March 31, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, June 2000).

Scope of Investigation

For purposes of these investigations, the product covered is all rebar sold in

[1] The petitioner in these investigations is the Rebar Trade Action Coalition (RTAC), and its individual members, AmeriSteel, Auburn Steel Co., Inc., Birmingham Steel Corp., Border Steel, Inc., Marion Steel Company, Riverview Steel, and Nucor Steel and CMC Steel Group. (Auburn Steel was not a petitioner in the Indonesia case).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (This section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. In NME cases, Section D requests information on factors of production. Section E requests information on further manufacturing.

straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Critical Circumstances

In the petition filed on June 28, 2000, the petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of rebar from Latvia. On July 18, 2000, concurrent with the initiations of the LTFV investigation on imports of rebar from Latvia, the Department announced its intention to investigate the petitioner's allegation that critical circumstances exist with respect to imports of rebar from Latvia. On August 14, 2000, the International Trade Commission (ITC) determined that there is a reasonable indication of material injury to the domestic industry from imports of rebar from Latvia.

Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist, if: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent or more during the ''relatively short period'' of time may be considered ''massive.''

With respect section to section 733(e)(1)(A)(i) of the Act, we do not find that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, inasmuch as no country has issued a finding of dumping against Latvian rebar. Further, with respect to section 733(e)(1)(A)(ii) of the Act, the magnitude of the dumping margins found in this preliminary determination is insufficient to conclude that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales. As such, we are issuing a preliminary negative critical circumstances determination.

Although unnecessary in this case, we have also examined whether imports have been massive over a ''relatively short period'' of time, pursuant to section 733(e)(1)(B) of the Act. To do so, the Department normally compares the import volume of the subject merchandise for three months immediately preceding the filing of the petition (*i.e.*, the base period), and three months following the filing of the petition (*i.e.*, the comparison period). However, as stated in section 351.206(i) of the Department's regulations, if the Secretary finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

In this case, the petitioner argues that importers, exporters, or producers of rebar from Latvia had reason to believe that an antidumping proceeding was likely before the filing of the petition. Based upon information contained in the petition, we found that press reports and published statements were sufficient to establish that, by December 1999, importers, exporters, and foreign producers knew or should have known that a proceeding was likely concerning rebar from Latvia. As a result, the Department has considered whether there have been massive imports after that time based on a comparison of periods immediately preceding and following the end of December 1999. *See Memorandum from Gary Taverman to Holly A. Kuga, Antidumping Duty Investigations of Steel Concrete Reinforcing Bar from Latvia—Preliminary Negative Determination of Critical Circumstances (Critical Circumstances Preliminary Determination Memorandum*), dated January 16, 2001.

In order to determine whether imports from Latvia have been massive, the Department requested that LM provide its shipment data for the last three years. Based on our analysis of the shipment data reported, because imports have decreased during the comparison period, we preliminarily find that the criterion under section 733(e)(1)(B) of the Act has not been met, *i.e.*, there have not been massive imports of rebar from LM over a relatively short time. *See Critical Circumstances Preliminary Determination Memorandum.* For this reason, we preliminarily determine that critical circumstances do not exist for imports of rebar produced by LM.

Regarding the ''all others'' category, it is the Department's practice to conduct its critical circumstances analysis of companies in this category based on the experience of the investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey (Rebar from Turkey*), 62 FR 9737, 9741 (March 4, 1997) (the Department found that critical circumstances existed for the majority of the companies investigated, and therefore concluded that critical circumstances also existed for companies covered by the ''all others'' rate). However, the Department does not automatically extend a critical circumstances determination to companies covered by the ''all others'' rate. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 30574, 30585 (June 8, 1999) (*Stainless Steel Sheet and Strip from Japan*). Instead, the Department may consider the traditional critical circumstances criteria with respect to the companies covered by the ''all others'' rate.

In determining whether imports from the ''all others'' category have been massive, the Department followed its normal practice of conducting its critical circumstances analysis of companies in this category based on the experience of the investigated companies. In this case, since we are unaware of any other Latvian rebar producers, it is appropriate to extend the experience of LM to the ''all others'' category. For this reason, we determine that the second criterion under section 733(e)(1) of the Act has not been met and that there have not been massive imports of rebar from the ''all others'' category over a relatively short time. Therefore, pursuant to section 733(e) of the Act and section 351.206(h) of the Department's regulations, we

preliminarily find that critical circumstances do not exist for imports of rebar produced by the ''all others'' category.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits us to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. LM is the only known producer/exporter of subject merchandise in Latvia.

Product Comparisons

Pursuant to section 771(16) of the Act, all products produced by the respondent covered by the description in the Scope of Investigation section, above, and sold in the comparison market during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on three criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: type of steel, yield strength, and size. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the comparison market to compare to U.S. sales, we compared U.S. sales to sales of the next most similar foreign like product on the basis of the characteristics listed above.

Fair Value Comparisons

To determine whether sales of rebar from Latvia were made in the United States at LTFV, we compared the export price (EP) to the normal value (NV), as described in the Export Price and Normal Value sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and, subsequently, compared these to weighted-average home market or third-country prices, as appropriate.

Export Price

For the price to the United States, we calculated an EP as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the exporter or producer outside the United States to an unaffiliated purchaser for exportation to the United States, before the date of importation, or to an unaffiliated purchaser for exportation to the United States. We calculated EP based on the packed, delivered, ex-factory prices charged to the first unaffiliated purchaser in the United States prior to importation. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight) and foreign brokerage and handling.

We note that, as explained below, we did not calculate dumping margins for certain sales by LM to an affiliated customer based on the reported databases. Instead, in accordance with section 776(a) of the Act, we preliminarily relied on adverse facts available in calculating the dumping margins for the transactions in question.

On December 1, 2000, the Department issued a memorandum stating that, for purposes of this investigation, it had found LM to be affiliated with one of its customers. *See Memorandum from Gabriel Adler to Gary Taverman: Antidumping Investigation of Steel Concrete Reinforcing Bars from Latvia; Affiliation* (December 1, 2000). On December 4, 2000, the Department issued a supplemental sales questionnaire to LM requesting, in part, that LM provide the downstream sales data for all sales made during the POI by its affiliated customer to unaffiliated parties in the United States. On December 6, 2000, LM stated that, while it did not view itself as affiliated with the customer in question, it had requested that its customer provide downstream sales data for its sales made to the United States during the POI. LM further stated that the affiliate was not willing to provide the Department with the requested information. On December 8, 2000, LM again stated that it could not provide this data to the Department.

Section 776(a)(2) of the Act provides that ''if an interested party or any other person (A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d) and (e) of the Act, use the facts otherwise available in reaching the applicable determination under this title.'' The statute requires that certain conditions be met before the Department may resort to the facts otherwise available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). Finally, section 776(b) states that an adverse inference may include reliance on information derived from the petition. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994).

While LM has been generally cooperative over the course of this antidumping proceeding, it has not been cooperative in responding to the Department's specific request for downstream sales data. As a result, we are applying the facts otherwise available for all sales made to the United States through the affiliate in question. Moreover, we are making an adverse inference with respect to this determination. Specifically, for sales made through this affiliated customer, we have assigned a margin calculated on the basis of the lowest net U.S. price

reported for any sale not involving the affiliate, and the highest normal value calculated for any product reported by the respondent.[3]

We note that, since most U.S. sales were made through the affiliate in question, the use of facts otherwise available extends to the majority of the respondent's U.S. sales. In reaching this preliminary determination, we are mindful that a respondent's failure to report the appropriate sales prices for the majority of U.S. sales might warrant wholesale rejection of the submitted responses, and reliance entirely on the facts otherwise available. In view of the specific circumstances presented in this case, however, we preliminarily believe at this time that it is more appropriate to base the dumping margins in part on that portion of the reported sales database that is not directly in question as a result of the respondent's omission. Given the nature of control between LM and its affiliate (where the affiliate has some measure of control over LM, but LM lacks control over its affiliate), the failure of the affiliate to provide requested sales data, while warranting an adverse inference with respect to those sales, does not necessarily impugn LM's compliance in reporting sales to other customers. While the factors above do not excuse the affiliate's failure to submit the requested sales information, they do provide a context in which it is appropriate to limit the use of adverse facts available to that specific omission.

Normal Value for Market Economy Analysis

A. Selection of Comparison Markets for Market Economy Countries

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

For the Latvia case, we found that LM does not have a viable home market for sales of rebar. Therefore, the respondent submitted data for sales to Germany, its largest third-country market, for purposes of the calculation of NV.

In deriving NV, we made adjustments as detailed in the Calculation of Normal Value Based on Third-Country Market Prices section below.

B. Cost of Production Analysis

On October 26, 2000, the petitioner made a sales below cost allegation against LM. Based on this allegation and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of rebar manufactured by LM were made at prices below the COP. As a result, the Department has conducted an investigation to determine whether LM made sales in its third-country comparison market at prices below the COP during the POI, within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of Cost of Production. In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market general and administrative (G&A) expenses, selling expenses, packing expenses and interest expenses.

We relied on the COP data submitted by LM in its cost questionnaire responses, except, as noted below, in specific instances where the submitted costs were not appropriately quantified or valued. We made company-specific adjustments to the reported COP as follows. First, we adjusted LM's reported G&A expense to include certain non-operating income and expense amounts that relate to the general operations of the company. Second, we adjusted the cost of goods sold amount used as the denominator in LM's G&A and interest expense rate calculations by excluding certain non-operating income and expense amounts included in the numerator of the G&A expense rate calculation. Finally, we excluded packing expenses from the calculation of LM's G&A and interest expenses.

2. Test of Home Market Sales Prices. We compared the adjusted weighted-average COP to the third-country market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.,* a period of one year) in substantial quantities[4] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the third-country prices, less any applicable movement charges.

3. Results of the COP Test. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' We found that no models of rebar sold by LM failed the 20 percent test and, therefore, we did not disregard any third-country sales in calculating NV.

C. Calculation of Normal Value Based on Third-Country Market Prices

We based third-country market prices on the packed prices to unaffiliated purchasers in Germany. We adjusted the starting price for foreign inland freight and international freight. We made no other adjustments.

We note that LM claimed a credit revenue for sales made to the United States and Germany. In its questionnaire responses, LM characterized this revenue as arising from prepayment made to LM by certain customers. For this preliminary determination, we have not allowed this claimed credit revenue as a circumstance of sale adjustment, as the respondent does not appear to be receiving prepayment from its customers. Instead, the respondent is apparently obtaining funds from banks in order to finance production, and arranging for customers to cancel this obligation directly with the banks after the merchandise is shipped. While the respondent has the use of the money to finance production, it must pay an interest fee to the banks, which offsets any imputed revenue that might arise from such an arrangement. LM has not demonstrated that these fees have been properly reported to the Department. As a result, we have denied the claimed credit revenue for U.S. and third-country sales for purposes of this preliminary determination. We intend to examine this issue further at verification.

D. Level of Trade

LM made only EP sales to the United States. LM's EP and third-country sales were made to trading companies and resellers. In both cases, the selling functions performed by LM for the

[3] Because we have relied on the respondent's own sales data as facts available, it is not necessary to corroborate such information under section 776(c) of the Act.

[4] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of NV.

different customer types and channels of distribution were limited in both markets to price and quantity negotiation, packing, and loading. The selling functions were virtually identical in both markets.

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP transaction.[5] The NV level of trade is that of the starting-price sales in the comparison market. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different level of trade than EP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

In implementing these principles in this investigation, we obtained information from LM about the marketing stages involved in the reported U.S. and third-country market sales, including a description of the selling activities performed by the respondent for each channel of distribution. In identifying levels of trade for EP and third-country market sales we considered the selling functions reflected in the starting price before any adjustments.

LM reported that its customers in both the United States and Germany were trading companies and resellers. LM further reported that its selling functions in both markets were identical and very limited (primarily to the provision of freight services), and did not include inventory maintenance, technical advice, warranty services, or advertising. Given this, we found a single level of trade for EP sales, and a single, identical level of trade in the comparison market. Therefore no adjustment for level of trade is warranted or granted.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for Latvia when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 135 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of steel concrete reinforcing bars from Latvia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the dumping margin, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

Manufacturer/exporter	Margin (percent)
Liepajas Metalurgs	17.37
All Others	17.37

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in these investigations in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our sales at LTFV and negative critical circumstances preliminary determinations. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threaten material injury to, the U.S. industry. The deadline for the ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one rebar case, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

As noted above, we will make our final determination no later than 135 days after the date of publication of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: January 16, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

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BILLING CODE 3510–DS–P

[5] As noted above, LM had only EP sales in the United States during the POI.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–822–804]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars From Belarus

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur or Karine Gziryan at (202) 482–5346 or (202) 482–4081, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Preliminary Determination

We preliminarily determine that steel concrete reinforcing bars (rebar) from Belarus are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on July 18, 2000.[1] *See Initiation of Antidumping Duty Investigations: Steel Concrete Reinforcing Bars from Austria, Belarus, Indonesia, Japan, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, the Russian Federation, Ukraine, and Venezuela*, 65 FR 45754 (July 25, 2000) (*Initiation Notice*). Since the initiation of this investigation, the following events have occurred:

On August 14, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation are threatening material injury or materially injuring a regional industry in the United States producing the domestic like product. *See Certain Steel Concrete Reinforcing Bars From Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela*, 65 FR 51329 (August 23, 2000). With respect to subject imports from Austria, Russia, and Venezuela, the ITC determined that imports from these countries during the period of investigation (POI) were negligible and, therefore, these investigations were terminated. The ITC also determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, by reason of subject imports from Japan. *Id.*

On August 18, 2000, we sent the antidumping questionnaire to the Embassy of the Republic of Belarus with a letter requesting that it forward the questionnaire to all exporters who had shipments of rebar to the United States during the POI.[2] We received responses from one company, Byelorussian Steel Works (BSW). We have reason to believe that this company accounted for all shipments of rebar from Belarus to the United States during the POI. We issued supplemental questionnaires to BSW, where appropriate.

On November 9, 2000, the petitioner requested a postponement of the preliminary determination in this investigation. On November 21, 2000, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until January 16, 2001. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea and Ukraine*, 65 FR 69909 (November 21, 2000).

Postponement of the Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On November 15, 2000, BSW requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. BSW also included a request to extend the provisional measures to not more than six months. Accordingly, since we have made an affirmative preliminary determination, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination.

Period of Investigation

The POI is October 1, 1999, through March 31, 2000. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, June 2000).

Scope of Investigation

For purposes of these investigations, the product covered is all rebar sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Critical Circumstances

In a letter filed on August 22, 2000, the petitioner alleged that there is a

[1] The petitioner in these investigations is the Rebar Trade Action Coalition (RTAC), and its individual members, AmeriSteel, Auburn Steel Co., Inc., Birmingham Steel Corp., Border Steel, Inc., Marion Steel Company, Riverview Steel, and Nucor Steel and CMC Steel Group. (Auburn Steel was not a petitioner in the Indonesia case).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (This section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. In NME cases, Section D requests information on factors of production. Section E requests information on further manufacturing.

reasonable basis to believe or suspect that critical circumstances exist with respect to imports of rebar from Belarus. Under section 733(e)(1) of the Act, when critical circumstances allegations are submitted more than 20 days before the scheduled date of the preliminary determination, the Department shall determine on the basis of information available whether there is a reasonable basis to believe or suspect that critical circumstances exist.

Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent or more during the ''relatively short period'' of time may be considered ''massive.''

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volume of the subject merchandise for three months immediately preceding the filing of the petition (*i.e.,* the base period), and three months following the filing of the petition (*i.e.,* the comparison period). However, as stated in section 351.206(i) of the Department's regulations, if the Secretary finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time (*i.e.,* from that time prior to the beginning of the proceeding). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

In this case, the petitioner argues that importers, exporters, or producers of rebar from Belarus had reason to believe that an antidumping proceeding was likely before the filing of the petition. Based upon information contained in the petition, we found that press reports and published statements were sufficient to establish that, by the end of December 1999, importers, exporters, and foreign producers knew or should have known that a proceeding was likely concerning rebar from Belarus. As a result, pursuant to section 351.206(i) of the Department's regulations, the Department has considered whether there have been massive imports after that time based on a comparison of periods immediately preceding and following the end of December 1999 (*i.e.,* April 1999 through December 1999, and January 2000 through September 2000, respectively). *See* Memorandum from Tom Futtner to Holly A. Kuga, Antidumping Duty Investigations of Steel Concrete Reinforcing Bar from Belarus—Preliminary Negative Determination of Critical Circumstances (*Critical Circumstances Preliminary Determination Memorandum*), dated January 16, 2000.

In its critical circumstances allegation, the petitioner also alleges that rebar is a product for which demand is subject to seasonal shifts, and that it is appropriate to use a seasonal methodology to examine whether an import surge occurred with respect to Belarus. We disagree with the petitioner's analysis of massive imports based on seasonality because the evidence on the record does not substantiate that imports of rebar from Belarus are subject to seasonal shifts. *See Critical Circumstances Preliminary Determination Memorandum.*

In order to determine whether imports from Belarus have been massive, the Department requested that BSW, the only Belorussian producer and exporter to the United States of the subject merchandise,[3] provide its shipment data for the last three years. Based on our analysis of the shipment data reported, because imports have decreased during the comparison period, we preliminarily find that the criterion under section 733(e)(1) of the Act has not been met, *i.e.,* there have not been massive imports of rebar from BSW over a relatively short time. *See Critical Circumstances Preliminary Determination Memorandum.* For this reason, we preliminarily determine that critical circumstances do not exist for imports of rebar from Belarus.

Non-Market Economy Status for Belarus

In accordance with section 771(18)(C) of the Act, any determination that a foreign country has at one time been considered a non-market economy (NME) shall remain in effect until revoked. This status covers the geographic area of the former U.S.S.R., each part of which retains the NME status of the former U.S.S.R. Therefore, Belarus will be treated as a NME country unless and until its NME status is revoked (*see Preliminary Determinations of Sales at Less Than Fair Value: Uranium From Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determinations of Sales at Not Less Than Fair Value: Uranium From Armenia, Azerbaijan, Belarus, Georgia, Moldova and Turkmenistan,* 57 FR 23380 (June 3, 1992)).

The respondent in this investigation has not requested a revocation of Belarus's NME status. We have, therefore, preliminarily continued to treat Belarus as a NME.

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the Normal Value section, below.

Separate Rates

It is the Department's policy to assign all exporters of subject merchandise in a NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. BSW has submitted separate rates information in its section A responses, and has requested a separate, company-specific rate. BSW has stated that it is wholly owned by the Ministry of Industry of the Republic of Belarus, but that is not controlled by the Government of the Republic of Belarus.

The Department's separate rates test is not concerned, in general, with macroeconomic/border-type controls (*e.g.,* export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over export-related investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of*

[3] *See* section of this notice on the Belarus-wide rate.

Sales at Less Than Fair Value, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 60 FR 14725, 14726 (March 20, 1995).

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), and amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, the Department assigns separate rates in NME cases only if an exporter can affirmatively demonstrate the absence of both (1) de jure and (2) de facto governmental control over export activities. *See Silicon Carbide* and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22545 (May 8, 1995).

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

In its questionnaire response, BSW asserts that under its Charter, it operates as an independent economic unit with those rights accorded to a legal entity, including the ownership of property, and independent responsibility for its sales. BSW also states that its owner, the Ministry of Industry of the Republic of Belarus, does not control the company's export activities. BSW further claims that there are no licensing requirements, quotas, or any other restrictions or controls by the Government of Belarus on exports of subject merchandise to the United States or any other destination.

However, despite requests by the Department in its original and supplemental questionnaires, BSW did not place on the record any legislative enactments or other formal measures by the Government of the Republic of Belarus that support its claims, and that demonstrate the absence of de jure control. While BSW's Charter may provide for the company to operate independently in some respects, the Charter (which BSW placed on the record) is subject to the laws of Belarus (which BSW did not submit), and does not by itself prove the absence of de jure control. Therefore, without any documentary proof of the absence of de jure control, BSW has not overcome the presumption of de jure control.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

BSW reports that it has authority to negotiate and sign contracts, and claims that no organization outside BSW reviews or approves any aspect of BSW's export sales transactions. In addition, the submitted sales documentation shows no government involvement in setting export prices. In regard to management selection, BSW states that the Ministry of Industry of the Republic of Belarus appoints the Directors of BSW. Then, in consultation with the General Director of BSW, the Directors appoint the management of BSW. BSW notes that the General Director also must notify the Government of any change in the position of Chief Engineer, the second most senior position in the company.

In regard to export revenue and profits, BSW reports that it has no restrictions on the use of its export revenue, but states that by special decrees of the Republic of Belarus, it is required to sell a certain percentage of its export revenue. BSW also claims that the management of BSW is solely responsible for the disposition of profits. However, proprietary documents on the record of this investigation indicate that the Ministry of Industry of the Republic of Belarus influences the allocation of BSW's profit.

While the record evidence indicates that BSW sets its own export prices and has the authority to negotiate and sign contracts, it appears that BSW does not have autonomy from the government in selecting its management: BSW's Directors, appointees of the Ministry of Industry, select the management. Furthermore, BSW does not have complete operational control over either the proceeds of its export sales or its profits. Other record evidence, including BSW's Charter, indicates that in general, BSW's relevant activities are under the jurisdiction of its owner, the Ministry of Industry of the Republic of Belarus. In view of BSW's relationship with the Ministry of Industry of the Republic of Belarus, BSW has not overcome the presumption of de facto government control. Due to the proprietary nature of these issues, for further details, *see* Memorandum on Whether to Grant BSW a Separate Rate dated January 16, 2001.

The failure to demonstrate either the absence of de jure or de facto control makes an exporter ineligible for a separate rate. In this case, we have preliminarily determined that BSW has failed to demonstrate the absence of both de jure and de facto control. Therefore, the Department preliminarily determines that BSW is not eligible to receive a separate rate.

The Belarus-Wide Rate

As in all NME cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters or producers comprise a single exporter under common government control, the ''NME entity.'' The Department assigns a single NME rate to the NME entity, unless an exporter can demonstrate eligibility for a separate rate. Information on the record of this investigation indicates that BSW was the only Belorussian producer and exporter to sell the subject merchandise to the United States during the POI. Since the only Belorussian producer and exporter of the subject merchandise responded to the Department's questionnaire, and we have no reason to believe that there are other non-responding exporters/producers of the subject merchandise during the POI, we calculated a Belarus-wide rate based on the weighted-average margin determined for BSW.

Fair Value Comparisons

To determine whether sales of rebar from Belarus were made in the United States at less than fair value, we compared export price (EP) to a NV calculated using our NME methodology, as described below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act because the merchandise was sold, prior to importation, by BSW to an unaffiliated purchaser for exportation to the United States, and constructed export price (CEP) methodology was not otherwise warranted based on the facts on the record. At the time of sale, BSW knew that its reported sales of the subject merchandise were destined for the United States.

We calculated EP based on the packed, delivered-at-frontier (DAF) and free-carrier (FCA) prices charged to the first unaffiliated customer for exportation to the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the factory to the frontier. Because inland freight was provided by NME companies, we based freight charges on surrogate freight rates from Thailand (see the Normal Value section for further discussion).

Normal Value

A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. The Department initially determined that Colombia, Ecuador, Namibia, South Africa, and Thailand were the countries most comparable to Belarus in terms of overall economic development (*see* the August 31, 2000, memorandum, *Antidumping Duty Investigation of Steel Concrete Reinforcing Bars (Rebar) from Belarus: Nonmarket Economy Status and Surrogate Country Selection*).

Because of a lack of necessary factor price information from the other potential surrogate countries that are significant producers of products comparable to the subject merchandise, we have relied, where possible, on information from Thailand, the source of the most complete information from among the potential surrogate countries. Accordingly, we have calculated NV by applying Thai values to BSW's factors of production. *See Factors of Production Valuation Memorandum*, dated January 16, 2001 (*Surrogate Value Memorandum*).

B. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production reported by BSW for the POI. To calculate NV, we multiplied the reported per-unit quantities by publicly available surrogate values from Thailand.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we included freight costs in input prices to make them delivered prices. Specifically, we added to the surrogate values a surrogate freight cost using the reported distance from the domestic supplier to the factory where this distance was shorter than the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997). Where a producer did not report the distance between the domestic supplier and the factory, we used as facts available the longest distance reported, *i.e.*, the distance from the nearest seaport to the factory. For those values not contemporaneous with the POI, we adjusted the values to account for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics.

We valued material inputs and packing materials (including steel scrap, ferroalloys, lime, limestone, coke, dolomite, haydite, fluorspar, wire with silicon calcium powder, electrodes, nitrogen, oxygen, argon, wire, and labels) using values from the appropriate Harmonized Tariff Schedule (HTS) number, from 1997, 1998, and 1999 Thai imports statistics reported in the United Nations Commodity Trade Statistics. Where a material input was purchased in a market-economy currency from an unaffiliated market-economy supplier, we valued such material input at the actual purchase price in accordance with section 351.408 (c)(1) of the Department's regulations. For a complete analysis of surrogate values, *see Surrogate Value Memorandum.*

We valued labor using the method described in 19 CFR 351.408(c)(3).

To value electricity, we used the 1997 Thai electricity rates, as adjusted, reported in the publication Energy Prices and Taxes, fourth quarter 1999. We based the value of natural gas on 1993 Thai prices reported in Coal and Natural Gas Competition in APEC Economies, published by the Asian Institute of Technology in August 1999.

We based our calculation of selling, general and administrative (SG&A) expenses, overhead, and profit on the 1999 financial statement of Sahaviriya Steel Industries Public Company Limited (Sahaviriya), a Thai producer of steel products comparable to the subject merchandise. Although Sahaviriya does not produce rebar, we used Sahaviriya's statement because Sahaviriya is a Thai producer of comparable steel products, and we could not locate a financial statement of a Thai rebar producer from which we could calculate a positive amount of profit. We only included depreciation in our overhead calculation because Sahaviriya's financial statement does not separately list other factory overhead expenses.

To value railway freight rates, we used a November 1999 rate from the State Railway of Thailand.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for Belarus when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 135 days after the date of publication of the preliminary LTFV determination.

Suspension of Liquidation

We are directing the Customs Service to suspend liquidation of any entries of rebar from Belarus entered, or withdrawn from warehouse, for consumption on or after the date on which this notice is published in the **Federal Register**. We are instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are provided below:

Manufacturer/exporter (percent)	Margin (percent)
Belarus-Wide Rate	73.98

The Belarus-wide rate applies to all entries of the subject merchandise from Belarus.

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in this investigation in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our affirmative sales at less than fair value and negative critical circumstances preliminary determinations. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury, to the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification report. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one rebar case, the Department may schedule a single hearing to encompass all the cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

As noted above, the final determination will be issued 135 days after the date of the publication of the preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: January 16, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 01–2519 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–841–804]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Moldova

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan or Michele Mire at (202) 482–5253 or (202) 482–4711, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR Part 351 (2000).

Preliminary Determination

We preliminarily determine that steel concrete reinforcing bars (rebar) from Moldova are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on July 18, 2000.[1] *See Initiation of Antidumping Duty Investigations: Steel Concrete Reinforcing Bars from Austria, Belarus, Indonesia, Japan, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, the Russian Federation, Ukraine, and Venezuela*, 65 FR 45754 (July 25, 2000) (*Initiation Notice*). Since the initiation of this investigation, the following events have occurred.

On August 14, 2000, the United States International Trade Commission (the ITC) preliminarily determined that there is a reasonable indication a regional industry in the United States is materially injured or threatened with material injury by reason of imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine of certain steel concrete reinforcing bars. *See Certain Steel Concrete Reinforcing Bars From Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela*, 65 FR 51329 (August 23, 2000). With respect to subject imports from Austria, Russia, and Venezuela, the ITC determined that imports from these countries during the period of investigation (POI) were negligible and, therefore, these investigations were terminated. The ITC also determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, by reason of subject imports from Japan. *Id.*

On August 18, 2000, we sent the antidumping questionnaire to the Embassy of the Republic of Moldova with a letter requesting that it forward the questionnaire to all exporters who had shipments of rebar to the United States during the POI.[2] We received responses from one company, Moldova Steel Works (MSW). We have reason to believe that MSW is the only exporter to the United States during the POI. We

[1] The petitioner in these investigations is the Rebar Trade Action Coalition (RTAC), and its individual members, AmeriSteel, Auburn Steel Co., Inc., Birmingham Steel Corp., Border Steel, Inc., Marion Steel Company, Riverview Steel, and Nucor Steel and CMC Steel Group. (Auburn Steel was not a petitioner in the Indonesia case).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (This section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. In NME cases, Section D requests information on factors of production. Section E requests information on further manufacturing.

issued several supplemental questionnaires to MSW, as appropriate.

On August 18, 2000, in the Department's original questionnaire, we requested MSW to provide copies of legislation and other documentation to substantiate its claim for a separate rate. On September 22, 2000, MSW responded to the Department's original Section A questionnaire and claimed that the company was located in the ''Transdniestrian region of Moldova'' (TMR).[3] Accordingly, MSW stated that any discussion regarding separate rates or copies of documentation and legislation would concern only the relationship between ''TMR'' and MSW. Currently, the United States Government does not recognize the ''TMR'' as a separate political state. On October 3, 2000, the Department, issued a supplemental questionnaire, requesting that MSW provide complete answers to the separate rates section of the questionnaire as it relates to the Republic of Moldova. On October 20, 2000, MSW responded, claiming that it is not under the jurisdiction of the Republic of Moldova and would therefore only provide information as it related to ''TMR.'' Finally, on October 31, 2000, the Department issued a second supplemental section A questionnaire, requesting MSW to provide copies of documentation and other supporting evidence for its claim for a separate rate, its claim for treating U.S. sales as export price (EP) transactions, and supporting discussions on several issues regarding affiliations with its customers. This second supplemental questionnaire was issued by the Department due to MSW's failure to respond to several questions in its October 20, 2000 response on these same issues. A response to the second supplemental questionnaire was filed on November 8, 2000.

During the course of this proceeding, MSW requested, and the Department granted, several extensions to enable MSW to respond to the Department's questions. The issues of primary importance in this investigation are separate rates, the proper universe of U.S. sales, and any potential affiliations with customers. These topics were addressed in the Department's original, first supplemental section A, and second supplemental section A questionnaires. We note that at each stage of the process, MSW failed to provide the requested information even after receiving extensions from the Department. For example, with regard to translations and discussions of legislation issued by the Government of Moldova and ''TMR,'' the Department made multiple requests for information. However, as evidenced by the submissions on the record, MSW repeatedly filed responses stating that it would provide the requested information at some undisclosed future date. Finally, after numerous requests, MSW filed translated copies of the requested legislation on November 22, 2000, nearly three months after these documents were initially requested in the Department's original questionnaire. Nonetheless, recognizing MSW's attempts to respond to the Department's information requests, and in light of its claimed unique difficulties, we believe that it is appropriate to use the information placed on the record for this preliminary determination, subject to verification.

In a letter filed on August 22, 2000, the petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of rebar from Moldova. On November 27, 2000, the Department preliminarily determined that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of rebar from Moldova. *See Preliminary Determinations of Critical Circumstances: Steel Concrete Reinforcing Bars from Ukraine and Moldova*, 65 FR 70696 (November 27, 2000).

On October 13, 2000, in a cover letter accompanying its unsolicited market economy Section B and C response, MSW requested that the Department find the concrete reinforcing bar industry in Moldova to be a market-oriented industry (MOI), but failed to provide a market economy section A response. The petitioner submitted comments to the Department on October 18, 2000, objecting to the MOI claim made by the responding company on the grounds that neither the Republic of Moldova nor ''TMR'' can be described as operating under market principles. Subsequently, the Department issued a supplemental questionnaire to MSW on October 20, 2000, requesting any additional information relevant to the MOI request, including a request for a market economy section A response. On November 8, 2000, we received responses from MSW providing documentation which it claimed supported its MOI claim, but in essence merely referred the Department to MSW's September 23, 2000, October 20, 2000, and November 8, 2000 responses to the non-market economy section A questionnaire.

On October 27, 2000, the Department issued its supplemental section C and D questionnaire, requesting MSW to provide information to substantiate its claims for date of sale, affiliation issues, and also to provide a complete list of all the factors of production which MSW had omitted in its original Section C and D responses filed on October 13, 2000. The response to this supplemental questionnaire was received on November 3, 2000.

On November 3, 2000, the petitioner alleged, in conjunction with MSW's MOI request, that MSW's sales were sold below the cost of production. Pending the Department's determination with respect to MSW's MOI request, the Department initiated a sales-below cost investigation on November 7, 2000, and issued a section D questionnaire to MSW. Responses to this questionnaire were submitted on December 6, 2000, after the Department granted MSW's request for an extension.

On November 9, 2000, the Department received a timely request for postponement of the preliminary determination from the petitioner in accordance with 19 CFR 351.205(e). The Department postponed the preliminary determination, pursuant to section 733(c)(1)(A) of the Act, until January 16, 2001. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, and Ukraine*, 65 FR 69909 (November 21, 2000).

Period of Investigation

The POI is October 1, 1999, through March 31, 2000. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* June 2000).

Scope of Investigation

For purposes of these investigations, the product covered is all rebar sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

[3] Although Moldova became independent in 1991, the population east of the Dniester river has proclaimed a ''Transdniestrian'' republic, referred to in this case as ''TMR.'' *See* CIA World Factbook, Moldova. The United States Government does not recognize ''TMR'' as a legitimate governmental body, *i.e.,* ''country'' within the meaning of section 773(c)(1)(A) of the Act. The United States only recognizes the Republic of Moldova as an independent political entity.

Critical Circumstances

On August 22, 2000, the petitioner alleged that critical circumstances exist with respect to imports of rebar from Moldova. On November 27, 2000, the Department preliminary determined that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of rebar from Moldova. *See Preliminary Determinations of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (November 27, 2000) (*Critical Circumstances Notice*).

Non-Market Economy Status for Moldova

In accordance with section 771(18)(C) of the Act, any determination that a foreign country has at one time been considered a non-market economy (NME) shall remain in effect until revoked. This status covers the geographic area of the former Union of Soviet Socialist Republics (U.S.S.R.), each part of which retains the NME status of the former U.S.S.R. Therefore, Moldova will be treated as an NME unless and until its NME status is revoked by the Department. *See Preliminary Determinations of Sales at Less Than Fair Value: Uranium From Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determinations of Sales at Not Less Than Fair Value: Uranium From Armenia, Azerbaijan, Belarus, Georgia, Moldova and Turkmenistan*, 57 FR 23380 (June 3, 1992).

The respondent in this investigation has not requested a revocation of Moldova's NME status. We have, therefore, preliminarily continued to treat Moldova as a NME country.

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the Normal Value section below.

Market Oriented Industry

As indicated above, the single Moldovan producer, MSW, requested that the Department find the concrete reinforcing bar industry in Moldova to be a MOI. We note at the outset that MSW did not request MOI status until October 13, 2000, well after our NME questionnaires were issued, leaving the Department little time to conduct its analysis. Nevertheless, the Department issued a supplemental questionnaire regarding information relevant to the MOI request on October 20, 2000. This supplemental questionnaire requested that MSW address the criteria for determining whether an MOI exists. Specifically, this questionnaire requested MSW to provide information regarding the level of governmental involvement in setting prices and production quantities, and the relationship between MSW and its owners; to describe the ownership structure of the rebar industry; and to demonstrate that market determined prices are paid for all significant inputs used in the production process. Furthermore, the Department sought clarifying information with regard to MSW's responses to section B and C of the Department's market economy questionnaire (including discussions on the proper comparison market), and requested that MSW respond to a market economy section A questionnaire to address concerns regarding affiliation, ownership, and distribution systems. On November 8, 2000, MSW responded to the Department's questionnaire by providing generic statements and cross-references to prior submissions, which the Department had separately found to be deficient. Nevertheless, the Department undertook an examination of the information placed on the record.

The criteria for determining whether a MOI exists are: (1) Virtually no government involvement in setting prices or amounts to be produced; (2) the industry producing the merchandise under review should be characterized by private or collective ownership; and (3) market determined prices must be paid for all significant inputs, whether material or non-material, and for all but an insignificant portion of all inputs accounting for the total value of the merchandise. *See Chrome-Plated Lug Nuts from the People's Republic of China; Final Results of Administrative Review*, 61 FR 58514, 58516 (November 15, 1996) (*Lug Nuts*). In addition, in order to make an affirmative determination that an industry in a NME country is a MOI, the Department requires information on virtually the entire industry. *See Freshwater Crawfish Tailmeat from the People's Republic of China, Final Determination of Sales at Less than Fair Value*, 62 FR 41347, 41353 (August 1, 1997) (*Crawfish*). A MOI claim, and supporting evidence, must cover producers that collectively constitute the industry in question; otherwise, the MOI claim is dismissed. *See id.*

We preliminarily find in this investigation that the Moldovan rebar industry does not meet the Department's criteria for an affirmative MOI finding. As noted above, MSW responded to the Department's supplemental MOI questionnaire by providing generic statements and cross-references to prior submissions, which the Department had separately found to be deficient. For example, MSW responded with the same unsupported assertion from its section A response that the ''TMR'' does not exercise control over its use and acquisition of capital. Therefore, applying the facts before us with respect to the first two criteria listed above, and based upon an examination of the information submitted on the record by MSW, we find that there is insufficient evidence to determine that: (1) There is virtually no government involvement in setting prices or amounts to be produced; and (2) the industry under review is characterized by private or collective ownership. With regard to the third factor, the record evidence demonstrates that market-determined prices are not paid for all significant inputs, whether material or non-material. In fact, Exhibit 3 of MSW's October 13, 2000 Section D response, and page 33 of MSW's November 3, 2000 supplemental response, demonstrate that only a few minor inputs were purchased from market economy suppliers and paid for in market economy currencies. Thus, the information on the record of this investigation does not support Moldova's claim that its rebar industry is a MOI. Therefore, we preliminarily determine that the Moldovan rebar industry does not meet the criteria for an affirmative MOI finding.

Separate Rates

It is the Department's policy to assign all exporters of subject merchandise in a NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. MSW has submitted separate rates information in its section A responses, and has requested a separate, company-specific rate. MSW has stated that it is partially owned by the ''State Property Committee of TMR,'' [4] but claimed that this entity is neither associated with, nor endorsed by, the Government of the Republic of Moldova. Despite the Department's requests for documents discussing the relationship between

[4] MSW made references in its responses to the ''State Property Committee of TMR,'' the ''State Committee on Property of TMR,'' and the ''State Committee of Property of TMR.'' As these three names are almost identical, we believe that these names all refer to the same entity. For the purposes of this notice, we will use a single name, the ''State Property Committee of TMR,'' in place of the three names that MSW used in its responses to refer to this entity.

MSW and the Republic of Moldova, MSW only provided copies of legislative enactments and other supporting documentation discussing the relationship between MSW and the ''TMR,'' an entity not recognized by the United States as a ''country'' within the meaning of section 773(c)(1)(A) of the Act. *See Case History* section above for a full discussion. We note that, although the United States does not recognize ''TMR'' as a country, even if the Department were to entertain, arguendo, MSW's analysis of its relationship to ''TMR'' under section 773(c) of the Act, the information provided does not support MSW's claim. An examination of the submitted documents alleged to establish the independence of MSW from the ''TMR'' reveals that MSW has failed to provide sufficient documentation to support its claim for a separate rate. Consequently, as discussed in detail below, we preliminarily determine, based on the facts on the record, that MSW has failed to meet the separate rates test both in relation to the Government of Moldova, as well as the ''TMR.''

The Department's separate rates test is not concerned, in general, with macroeconomic/border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over export-related investment, pricing, and output decision-making process at the individual firm level. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Notice of Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China*, 60 FR 14725, 14728 (March 20, 1995).

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20585–87 (May 6, 1991), and amplified in *Final Determination of Sales at Less-Than-Fair-Value: Silicon Carbide from the People's Republic of China*, 59 FR 22588 (May 2, 1994) (*Silicon Carbide*). Under this test, the Department assigns separate rates in NME cases only if an exporter can affirmatively demonstrate the absence of both (1) de jure and (2) de facto governmental control over export activities. See *Silicon Carbide* and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22545 (May 8, 1995).

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

During the course of this investigation, MSW has failed to provide any legislation or other documentation issued by the Republic of Moldova regarding the absence of de jure control. For purposes of this investigation, we preliminarily determine that MSW has not provided sufficient documentary proof of the absence of de jure control by the Republic of Moldova. As a consequence, we find that MSW fails to overcome the presumption of de jure control.

Although the Republic of Moldova is the only country recognized by the United States for the purposes of this investigation, for the sake of argument we have addressed MSW's claims with respect to ''TMR.'' Given the fact that MSW only provided documentation regarding its relationship with the ''State Property Committee of TMR,'' the Department examined this information to determine the extent to which there is any governmental control, regional or otherwise, over the operations of MSW. MSW asserts in its questionnaire response that under its Charter, it operates as an independent economic unit with those rights accorded to a legal entity, including the ownership of property. MSW claims that it bears independent responsibility for its sales and that the ''State Property Committee of TMR,'' does not control the company's export activities. MSW also claims that there are no licensing requirements, quotas, or any other restrictions or controls by the ''TMR'' on exports of subject merchandise to the United States or any other destination.

Despite having made such claims, and despite several requests by the Department, MSW failed to submit adequate translations and original language copies of the legislation of the ''TMR.'' MSW provided the Department with a copy of its Charter, but since this document is neither a formal measure by the Government of the Republic of Moldova nor ''TMR,'' its provisions are not dispositive in the de jure analysis. Therefore, without any documentary proof of the absence of de jure control, we preliminarily determine that MSW has failed to overcome the presumption of de jure control.

2. Absence of De Facto Control

Having failed to overcome the presumption of de jure control, the Department need not address MSW's claim that it is not de facto controlled by either the Republic of Moldova or the ''TMR.'' However, we note that the information supplied would also be insufficient to establish an absence of de facto control as discussed below.

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

In its responses, MSW failed to discuss the extent, if any, to which the Republic of Moldova exercised de facto control over its export functions. As such, the Department was prevented from conducting a thorough analysis of the four afore-mentioned factors regarding the absence of de facto control by the Government of Moldova. In view of MSW's failure to provide documentation regarding its relationship with the Government of the Republic of Moldova, MSW fails to overcome the presumption of de facto governmental control.

MSW did provide certain information in relation to the de facto control by the ''TMR,'' which, as discussed above, we are addressing solely for the sake of argument. MSW reported that it has authority to negotiate and sign contracts without express ''TMR'' approval, and claimed that no organization outside MSW reviews or approves any aspect of MSW's export sales transactions. In addition, although MSW failed to discuss the Republic of Moldova's control over MSW's export functions, the submitted sales documentation showed no involvement by either the Government of Moldova or ''TMR'' in setting export prices.

In regards to management selection, MSW stated that the shareholders of MSW elect the Board of Directors which in turn elects the Governing Board (*i.e.*, the company management). The documentation on the record did not reference the Government of Moldova, but indicated that the ''State Property Committee of TMR'' is a shareholder that exercises veto power over several aspects of the operational control of MSW. This includes the power to veto any ventures, associations, and agreements entered into by MSW for export sales.

In regards to export revenue and profits, MSW reported that it has no internal restrictions on the use of its export revenue, but stated that by special decrees of the ''TMR,'' it is required to sell a certain percentage of its export revenue.

In addition, MSW further claimed that the management of MSW is solely responsible for the disposition of the profits. However, MSW's Charter indicates that the ''State Property Committee of TMR'' influences the allocation of MSW's profit.

While the record evidence indicates that MSW sets its own export prices and has the authority to negotiate and sign contracts, it appears that, assuming the validity of the regional entity ''TMR,'' MSW does not have autonomy from the ''State Property Committee of TMR'' in selecting its management, since the regional ''State Property Committee of TMR'' assists in appointing MSW's Directors, who in turn select the management. In addition, MSW does not have complete operational control over either the proceeds of its export sales or its profits.

Furthermore, other record evidence, including MSW's Charter, indicates that in general, MSW is under the jurisdiction of the ''State Property Committee of TMR.'' In view of MSW's failure to provide documentation regarding its relationship with the Government of the Republic of Moldova, MSW fails to overcome the presumption of *de facto* governmental control. Moreover, even if ''TMR'' were a recognized government, MSW's numerous ties to the ''State Property Committee of TMR'' would justify a finding of *de facto* government control.

The failure to demonstrate either the absence of *de jure* or *de facto* control makes an exporter ineligible for a separate rate. In this case, we have preliminary determined that MSW has failed to demonstrate the absence of both *de jure* and *de facto* control. Therefore, the Department preliminarily determines that MSW is not eligible to receive a separate rate.

The Moldova-Wide Rate

As in all NME cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters or producers comprise a single exporter under common government control, the ''NME entity.'' The Department assigns a single NME rate to the NME entity, unless an exporter can demonstrate eligibility for a separate rate. Information on the record of this investigation indicates that MSW was the only Moldovan producer and exporter to sell the subject merchandise to the United States during the POI. Since the only Moldovan producer and exporter of the subject merchandise responded to the Department's questionnaire, and we have no reason to believe that there are other non-responding exporters/producers of the subject merchandise during the POI, we calculated a Moldova-wide rate based on the weighted-average margin determined for MSW.

Fair Value Comparisons

To determine whether sales of rebar from Moldova were made in the United States at less than fair value, we compared export price (EP) to a normal value (NV) calculated using our NME methodology, as described below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act because the merchandise was sold, prior to importation, by MSW to an unaffiliated purchaser for exportation to the United States, and constructed export price (CEP) methodology was not otherwise warranted based on the facts on the record. At the time of sale, MSW knew that its reported sales of the subject merchandise were destined for the United States.

We calculated EP based on the freight-on-board (FOB) prices charged to the first unaffiliated customer for exportation to the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the factory to the port of export and domestic brokerage and handling expenses. Because inland freight and brokerage and handling services were provided by NME companies, we based freight and brokerage charges on surrogate freight and brokerage rates from India. *See* Normal Value section for further discussion.

Normal Value

A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. The Department initially determined that India, Pakistan, Indonesia, and Sri Lanka were the countries most comparable to Moldova in terms of overall economic development. *See* the memorandum regarding *Antidumping Duty Investigation of Steel Concrete Reinforcing Bars (Rebar) from Moldova: Nonmarket Economy Status and Surrogate Country Selection,* dated August 31, 2000.

Furthermore, the Department determined, based on information derived from publicly available sources, that India is a significant producer of products comparable to the subject merchandise. Therefore, we have relied, where possible, on information from India, and calculated NV by applying Indian values to virtually all of MSW's factors of production. Where no Indian values were available, we used information from Indonesia, the second-most complete source of information from among the potential surrogate countries. *See Surrogate Value Memorandum,* dated January 16, 2001.

B. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production (*e.g.* steel scrap, ferroalloys, labor, energy, and packing materials) reported by MSW for the POI. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available surrogate values from India, and where necessary, from Indonesia.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we include freight costs in input prices to make them delivered prices. Specifically, we added to the surrogate values of inputs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the port of export to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F. 3d 1401, 1408–11 (Fed. Cir. 1997). Where MSW did not report the distance between the material supplier and the factory, we used, as

facts available, the longest distance reported, *i.e.,* the distance between the port of export and the factory. For those values not contemporaneous with the POI, we adjusted the values to account for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics.

We valued material inputs and packing materials (*i.e.,* metal scrap, ferromanganese, silicomanganese, ferrosilicon, lime, limestone, coke, aluminum powder, aluminum, electrodes, wire rod, paint, etc.) using values from the appropriate Harmonized Tariff Schedule (HTS) number, from imports statistics reported in the *Monthly Statistics on Foreign Trade for India* for the partial year 1998, or in the TradeStat Web data for the period October 1999 to March 2000. For a complete analysis of surrogate values, *see Surrogate Value Memorandum.*

We valued labor using the method described in 19 CFR 351.408(c)(3).

To value electricity, we used the 1997 electricity rates, as adjusted, for India reported in the publication *Energy Prices and Taxes,* fourth quarter 1999. We based the value of natural gas on the value calculated in the final determination of Polyvinyl Alcohol from the People's Republic of China. Finally we valued oxygen, nitrogen, and argon on the import statistics reported in the *Monthly Statistics of Foreign Trade for India* for the partial year 1998.

We based our calculation of factory overhead and selling, general and administrative (SG&A) expenses, and profit on the 1999–2000 financial statement of TATA Steel Company, an Indian producer of products comparable to the subject merchandise.

To value railway freight rates, we used a 1998 rate provided by the Indian Railway Conference Association. For truck transportation, we valued truck rates using information from a prior investigation, as adjusted for inflation. *See Surrogate Value Memorandum.*

For each of the material inputs, energy, and transportation surrogate values selected for use in the Department's calculation, we inflated the values using appropriate inflators when these values were not from a period concurrent with the POI. *See Surrogate Value Memorandum.*

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for Moldova when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 75 days after the date of publication of the preliminary LTFV determination.

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances finding, we are directing the Customs Service to suspend liquidation of all entries of rebar from Moldova entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date on which this notice is published in the **Federal Register**. *See Critical Circumstances Notice,* dated November 27, 2000. We are instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are provided below:

Manufacturer/exporter	Margin (percent)
Moldova-Wide Rate	277.62

The Moldova-wide rate applies to all entries of the subject merchandise from Moldova.

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to the proceeding in this investigation in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our affirmative sales at LTFV and critical circumstances preliminary determinations. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury, to the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than seven days after the issuance of the verification report. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, it would be appreciated if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one rebar case, the Department may schedule a single hearing to encompass all the cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of the preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: January 16, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 01–2520 Filed 1–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–860]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Charles Riggle at (202) 482–4162 or (202) 482–0650, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Preliminary Determination

We preliminarily determine that steel concrete reinforcing bar (rebar) from the People's Republic of China (PRC) is being sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on July 18, 2000.[1] *See Initiation of Antidumping Duty Investigations: Steel Concrete Reinforcing Bars from Austria, Belarus, Indonesia, Japan, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, the Russian Federation, Ukraine, and Venezuela,* 65 FR 45754 (July 25, 2000) (*Initiation Notice*). Since the initiation of this investigation, the following events have occurred.

In the petition, filed on June 28, 2000, the petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of rebar from the PRC. On August 30, 2000, the Department preliminarily determined that critical circumstances exist with respect to exports of rebar from the PRC. *See Memorandum to Holly A. Kuga Re: Preliminary Affirmative Determinations of Critical Circumstances* (August 30, 2000); *see also Preliminary Determinations of Critical Circumstances: Steel Concrete Reinforcing Bars From the People's Republic of China and Poland,* 65 FR 54228 (September 7, 2000).

On August 14, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that a regional industry in the United States is materially injured or threatened with material injury by reason of imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine of certain steel concrete reinforcing bars. *See Certain Steel Concrete Reinforcing Bars From Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela,* 65 FR 51329 (August 23, 2000). With respect to subject imports from Austria, Russia, and Venezuela, the ITC determined that imports from these countries during the period of investigation (POI) were negligible and, therefore, these investigations were terminated. The ITC also determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, by reason of subject imports from Japan. *Id.*

On August 18, 2000, we issued the antidumping questionnaire to the Chinese Ministry of Foreign Trade & Economic Cooperation (MOFTEC) with a letter requesting that it forward the questionnaire to all exporters of rebar who had shipments during the POI.[2] In addition, on August 18, 2000, we sent the questionnaire to the Chinese exporter/producer Laiwu Steel Group, Ltd. (Laiwu), which had contacted us through counsel, with instructions to complete and return the questionnaire by the given deadline. We received a response only from Laiwu. Subsequently, we issued supplemental questionnaires to, and received responses from Laiwu.

On September 13, 2000, we invited interested parties to provide comments on the surrogate country selection and publicly available information for valuing the factors of production. We received comments from the petitioner between October 16 and November 13, 2000, and from Laiwu on October 23, 2000.

On November 9, 2000, the petitioner requested a postponement of the preliminary determination in this investigation. On November 21, 2000, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until January 16, 2001. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea and Ukraine,* 65 FR 69909 (November 21, 2000).

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on December 28, 2000, Laiwu requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination. In its request, Laiwu also requested that the Department extend by 60 days the application of the provisional measures prescribed under paragraphs (1) and (2) of section 773(d) of the Act. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Period of Investigation

The POI is October 1, 1999, through March 31, 2000. This period

[1] The petitioner in these investigations is the Rebar Trade Action Coalition (RTAC), and its individual members, AmeriSteel, Auburn Steel Co., Inc., Birmingham Steel Corp., Border Steel, Inc., Marion Steel Company, Riverview Steel, and Nucor Steel and CMC Steel Group. (Auburn Steel was not a petitioner in the Indonesia case).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (This section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. In NME cases, Section D requests information on factors of production. Section E requests information on further manufacturing.

corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* June 2000).

Scope of Investigation

For purposes of these investigations, the product covered is all rebar sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Non-market Economy Status for the People's Republic of China

The Department has treated the PRC as a non-market economy (NME) country in all past antidumping investigations (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China,* 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China,* 65 FR 19873 (April 13, 2000). A designation as a NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). The respondent in this investigation has not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as a NME. When the Department is investigating imports from a NME, section 773(c)(1) of the Act directs us to base the normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the Normal Value section, below.

Separate Rates

It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Laiwu, the only responding company that has submitted a questionnaire response, has provided the requested company-specific separate rates information and has stated that there is no element of government ownership or control. In its questionnaire response, Laiwu states that it is an independent company ''owned by all the people'' and controlled by the general assembly of workers and employees. Laiwu further claims that it does not maintain any corporate relationship with the central, provincial, and local government in terms of production, management, and operations. As stated in the *Final Determination of Sales at Less-Than-Fair-Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*), and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol,* 60 FR 22545 (May 8, 1995) (*Furfuryl Alcohol*), ownership of a company by ''all the people'' does not require the application of a single rate. The Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls (*e.g.,* export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over the export-related investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 60 FR 14725, 14726 (March 20, 1995).

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), and amplified in *Silicon Carbide.* Under this test, the Department assigns separate rates in NME cases only if an exporter can affirmatively demonstrate the absence of both (1) de jure and (2) de facto governmental control over export activities. *See Silicon Carbide* and *Furfuryl Alcohol.*

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Laiwu has placed on the record a number of documents to demonstrate absence of de jure control, including the ''Foreign Trade Law of the People's Republic of China,'' promulgated on May 12, 1994, the ''Law of the People's Republic of China on Industrial Enterprises Owned By the Whole People,'' adopted on April 13, 1988, and the ''Regulations for Transformation of Operational Mechanism of State-Owned Enterprises,'' effective as of July 23, 1992. In prior cases, the Department has analyzed these laws and found that they establish an absence of de jure control. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China,* 60 FR 54472 (October 24, 1995). We have no new information in this proceeding which would cause us to reconsider this determination.

As stated in previous cases, there is some evidence that the provisions of the above-cited 1988 Law and 1992 Regulations regarding enterprise autonomy have not been implemented uniformly among different sectors and/or jurisdictions in the PRC, (*see* ''PRC Government Findings on Enterprise Autonomy,'' in Foreign Broadcast Information Service-China-93–133 (July 14, 1993)). Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

Laiwu asserted the following: (1) It establishes its own export prices independently of the government and without the approval of a government authority; (2) it negotiates contracts, without guidance from any

governmental entities or organizations; (3) it makes its own personnel decisions including the selection of management; and (4) it retains the proceeds of its export sales, and utilizes profits according to its business needs.

Based on the information provided, we preliminarily determine that Laiwu has met the criteria for the application of separate rates. We will examine this matter further at verification.

Since Laiwu is the only responding producer/exporter, we preliminarily determine, as facts available, that all other non-responsive producers/exporters have not met the criteria for application of separate rates.

The People's Republic of China-Wide Rate and Use of Facts Otherwise Available

All exporters were given the opportunity to respond to the Department's questionnaire. As explained above, we received a timely response from only Laiwu, for which we have calculated a company-specific rate. Our review of U.S. import statistics from the PRC, however, reveals that Laiwu did not account for all imports into the United States from the PRC. For this reason, we preliminarily determine that some PRC exporters of steel concrete reinforcing bars failed to respond to our questionnaire. In accordance with our standard practice, as adverse facts available, we are assigning as the PRC-wide rate the higher of: (1) The highest margin stated in the notice of initiation; or (2) the margin calculated for Laiwu (*see, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China* 64 FR 34660 (May 31, 2000). In this case, the preliminary adverse facts available margin is 59.98 percent, which is the highest margin stated in the notice of initiation.

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870).

In order to determine the probative value of the margins in the petitions for use as adverse facts available for purposes of this determination, we examined evidence supporting the calculations in the petitions. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the (EP) and normal value (NV) calculations on which the margins in the petitions were based. Our review of the EP and NV calculations indicated that the information in the petitions has probative value, as certain information included in the margin calculations in the petitions is from public sources concurrent, for the most part, with the POI. For purposes of the preliminary determination, we attempted to further corroborate the information in the petition. We re-examined the EP and NV data which formed the basis for the highest margin in the petition in light of information obtained during the investigation and, to the extent practicable, found that it has probative value (*see* the January 16, 2001, memoranda to the file regarding *Corroboration of the Petition Data for the People's Republic of China* on file in the Central Records Unit, Room B–099, of the Main Commerce Department building).

Fair Value Comparisons

To determine whether sales of rebar from the PRC were made in the United States at less than fair value, we compared export price (EP) to NV based on a NME analysis, as described below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act, because Laiwu sold the subject merchandise directly to unaffiliated customers in the United States prior to importation, and constructed export price (CEP) methodology was not otherwise appropriate. We calculated EP based on packed free-on-board (FOB) or, where appropriate, cost and freight (C&F) prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant/warehouse to the port of embarkation, insurance, brokerage and handling in China, ocean freight and marine insurance. Because certain domestic charges such as those for inland freight, insurance, brokerage and handling, and ocean freight were provided by NME companies, we based those charges on surrogate rates from India. (*See Memorandum from the Team to the File,* dated January 16, 2001 (*Surrogate Value Memorandum*).)

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. The Department initially determined that India, Pakistan, Indonesia, Sri Lanka, and Philippines were the countries most comparable to the PRC in terms of overall economic development (*see* the August 31, 2000, memorandum, *Antidumping Duty Investigation of Steel Concrete Reinforcing Bars (Rebar) from the People's Republic of China (PRC): Nonmarket Economy Status and Surrogate Country Selection*).

Because of a lack of the necessary factor price information from the other potential surrogate countries that are significant producers of comparable products to the subject merchandise, we have relied, where possible, on information from India, the source of the most complete information from among the potential surrogate countries. Accordingly, we have calculated NV by applying Indian values to Laiwu's factors of production for virtually all factors. *See Surrogate Value Memorandum.*

2. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by Laiwu for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian surrogate values.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to Indian surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F. 3d 1401 (Fed. Cir.

1997). Where a producer did not report the distance between the material supplier and the factory, we used as facts available the longest distance reported, *i.e.,* the distance between the PRC seaport and the producer's location. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics.

We valued material inputs and packing materials (*e.g.,* where appropriate, coal, iron ore, limestone, white ash, permanganese, aluminum manganese, ferro-silicon, silico-calcium, aluminum, steel strip, and wire rod) by Harmonized Tariff Schedule (HTS) number, using primarily imports statistics from the Monthly Statistics of the Foreign Trade of India and the United Nations Commodity Trade Statistics. Where a material input was purchased in a market-economy currency from a market-economy supplier, we valued such a material input at the actual purchase price in accordance with section 351.408 (c)(1) of the Department's regulations.

We valued labor using the method described in 19 CFR 351.408(c)(3).

To value electricity, we used the 1997 electricity rates, as adjusted for inflation, for India as reported in the publication Energy Prices and Taxes, 4th quarter 1999.

We based our calculation of factory overhead, selling, general and administrative (SG&A) expenses, and profit on the 1999/2000 financial statements of The TATA Iron and Steel Company Limited, an Indian producer of products comparable to the subject merchandise.

To value truck freight rates, we used freight costs based on price quotes obtained by the Department in November 1999 from trucking companies in India. For rail transportation, we valued rail rates using information published by the Indian Railway Conference Association in June 1998, as adjusted for inflation.

For brokerage and handling, we used the recent publicly available source which is the public version of a U.S. sales listing reported in the questionnaire response submitted by Viraj Impoexpo in the *New Shipper Review of Stainless Steel Wire Rod from India*, 63 FR 48184 (September 9, 1998).

For a complete analysis of surrogate values, see *Surrogate Value Memorandum.*

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for the PRC when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 135 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances findings, we are directing the Customs Service to suspend liquidation of all unliquidated entries of rebar from the PRC entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date on which this notice is published in the **Federal Register**. We are instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are provided below:

Manufacturer/exporter	Margin (percent)
Laiwu Steel Group, Ltd	20.89
PRC-Wide Rate	59.98

The China-wide rate applies to all entries of the subject merchandise except for entries from the exporter/factory that is identified above.

Disclosure

The Department will disclose calculations performed within five days of this determination to the parties of the proceedings in this investigation in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our sales at LTFV and our affirmative critical circumstances preliminary determinations. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one rebar case, the Department may schedule a single hearing to encompass all the cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

As noted above, the final determination for the PRC will be issued no later than 135 days after the date of the publication of the preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: January 16, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 01–2521 Filed 1–29–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–455–803; A–560–811; A–823–809]

Notice of Preliminary Determinations of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Poland, Indonesia, and Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Valerie Ellis at (202) 482–2336 (for Poland), Maisha Cryor at (202) 482–5831 (for Indonesia), or Keir Whitson at (202) 482–1777 (for Ukraine), AD/CVD Enforcement, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Preliminary Determinations

We preliminarily determine that steel concrete reinforcing bars (rebar) from Poland, Indonesia, and Ukraine are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

These investigations were initiated on July 18, 2000.[1] *See Initiation of Antidumping Duty Investigations: Steel Concrete Reinforcing Bars from Austria, Belarus, Indonesia, Japan, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, the Russian Federation, Ukraine and Venezuela,* 65 FR 45754 (July 25, 2000) (*Initiation Notice*). Since the initiation of the investigations, the following events have occurred.

On August 14, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that a regional industry in the United States is materially injured or threatened with material injury by reason of imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine of certain steel concrete reinforcing bars. *See Certain Steel Concrete Reinforcing Bars From Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela,* 65 FR 51329 (August 23, 2000). With respect to subject imports from Austria, Russia, and Venezuela, the ITC determined that imports from these countries during the period of investigation (POI) were negligible and, therefore, these investigations were terminated. The ITC also determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, by reason of subject imports from Japan. *Id.*

On August 18, 2000, the Department issued complete antidumping questionnaires to all known producers/exporters of subject merchandise in Poland and Ukraine.[2] In the case of Indonesia, the complete antidumping questionnaire was issued to PT The Master Steel Manufacturing Co.[3] (Master Steel), and partial Section A questionnaires[4] were issued to several additional Indonesian steel companies in order to gather adequate quantity and value information to make a respondent selection determination in that investigation. For a further discussion of the respondent selection process for Indonesia, *see* the Indonesia section, below.

In the petition, filed on June 28, 2000, the petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of rebar from Poland.

On August 30, 2000, the Department preliminarily determined that critical circumstances exist with respect to exports of rebar from Poland. *See Memorandum to Holly A. Kuga Re: Preliminary Affirmative Determinations of Critical Circumstances* (August 30, 2000); *see also Preliminary Determinations of Critical Circumstances: Steel Concrete Reinforcing Bars From the People's Republic of China and Poland,* 65 FR 54228 (September 7, 2000).

In a letter filed on August 22, 2000, the petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of rebar from Ukraine. On November 27, 2000, the Department preliminarily determined that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of rebar from Ukraine. *See Preliminary Determinations of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova,* 65 FR 70696 (November 27, 2000).

On November 9, 2000, the petitioner requested a postponement of the preliminary determinations in these investigations. On November 21, 2000, the Department published a **Federal Register** notice postponing the deadline for the preliminary determinations until January 16, 2001. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea and Ukraine,* 65 FR 69909 (November 21, 2000).

Period of Investigations

For Poland and Indonesia, the POI is April 1, 1999, through March 31, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* June 2000). Because Ukraine is a non-market economy, the POI for Ukraine corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition; namely, October 1, 1999 through March 31, 2000.

[1] The petitioner in these investigations is the Rebar Trade Action Coalition (RTAC), and its individual members, AmeriSteel, Auburn Steel Co., Inc., Birmingham Steel Corp., Border Steel, Inc., Marion Steel Company, Riverview Steel, and Nucor Steel and CMC Steel Group. (Auburn Steel was not a petitioner in the Indonesia case).

[2] Because the Department considers Ukraine to be a non-market economy, and because the number of producers/exporters identified in Ukraine did not appear to preclude an examination of each exporter and that exporter's suppliers, we determined to examine all exports to the United States from Ukraine in accordance with our general practice. *See Memorandum to Holly A. Kuga Re: Selection of Respondents* (August 25, 2000). In the case of Poland, a market economy, we found that only one producer in Poland exported subject merchandise to the United States during the POI. We therefore determined to examine all exports from Poland during the POI, in accordance with our general practice. *Id.*

[3] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. In NME cases, Section D requests information on factors of production. Section E requests information on further manufacturing.

[4] The partial Section A questionnaire requests information on the quantity and value of home and U.S. market sales.

Scope of Investigations

For purposes of these investigations, the product covered is all rebar sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.,* non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Facts Available

1. Application of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–20 (October 16, 1997). Finally, section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994).

Poland

In accordance with section 776(a)(2), 776(b), and 782(d) and (e) of the Act, for the reasons explained below, we preliminarily determine that the use of total adverse facts available is warranted with respect to Huta Ostrowiec S.A. and Stalexport (collectively, Stalexport).

On August 18, 2000, the Department issued an antidumping questionnaire to Stalexport. On October 6, 2000, we received a section A questionnaire response from Stalexport, and on October 10, 2000, we received the responses to sections B through D of our questionnaire. We reviewed these initial responses and found that a substantial portion of the sales in Stalexport's home market sales listing were sales to an affiliated reseller, rather than the resales to the first unaffiliated customer. This resulted not only in an incomplete and unreliable home market sales listing, but also in an inaccurate total quantity and value for Stalexport's POI sales. In order to address this and other deficiencies, we issued a supplemental section A questionnaire on October 6, 2000. The response was initially due on October 20, 2000. However, Stalexport never retrieved the supplemental questionnaire from our courier office. Therefore, we re-issued the supplemental section A questionnaire on October 25, 2000, along with supplemental section B and section C questionnaires. This gave Stalexport an additional eighteen days to complete its response to section A, *i.e.,* until November 7, 2000, and until November 13, 2000, to respond to supplemental section B and section C questionnaires. We also issued a supplemental section D questionnaire on October 27, 2000, with a response due date of November 9, 2000.

Although we provided Stalexport with additional time to complete the supplemental section A questionnaire, the company did not submit a response. Stalexport also did not respond to the section B, C or D supplementals by the respective due dates, nor did the company request that the Department grant any extension of the deadline to respond. On November 9, 2000, we phoned counsel for Stalexport to inquire as to whether the respondent was aware that the deadlines for responding to the supplemental questionnaire responses had passed. Counsel for Stalexport indicated that he was indeed aware that the deadline had passed, and offered no explanation for Stalexport's failure to meet the response deadline. *See Memorandum to the File from Charles Riggle,* dated November 13, 2000.

As described above, Stalexport failed to provide, within the applicable deadlines, its responses to the Department's supplemental questionnaires. Despite the Department's repeated attempts, pursuant to section 782(d) of the Act, to obtain, inter alia, Stalexport's unreported sales by its affiliated resellers, Stalexport failed to respond. In addition, without the supplemental questionnaire responses, we are unable to determine the extent of unreported home market sales, whether Stalexport provided the appropriate date of sale for the sales that it did report, and whether Stalexport's home market and U.S. sales are reported on an equivalent weight basis for comparison purposes. As a result, we do not have a reliable home market listing to use for comparison purposes in accordance with our general practice, nor are we able to confirm the appropriate date of sale for any of the submitted sales.

We further find that the application of section 782(e) of the Act, we are unable to use the company-specific information contained in the responses we did receive, given that the deadline for submitting the necessary information has passed, and the responses currently on the record are so incomplete that they cannot serve as a reliable basis for reaching the applicable determination. *See* sections 782(e)(1), (3) and (4) of the Act. We further note that Stalexport did not notify the Department that it would be unable to submit the requested information, nor did it provide any explanation or propose an alternate form of submitting the required data, pursuant to section 782(c)(1) of the Act. Because the information that Stalexport failed to report is critical for purposes of the preliminary dumping calculations, the Department must resort to facts otherwise available in reaching its preliminary determination, pursuant to section 776(a)(2)(A), (B) and (C).

We also find that the application of an adverse inference in this case is appropriate, pursuant to section 776(b) of the Act. As discussed above, Stalexport failed to provide the critical data pertaining to the company's affiliated party transactions and date of sale, despite the Department's clear directions in both the original and supplemental questionnaires and numerous conversations with the company's counsel. Furthermore, Stalexport made no effort to provide any explanation or propose an alternate form of submitting the required data. For these reasons, we find that Stalexport did not act to the best of its ability in responding to the Department's request for information, and that, consequently, an adverse inference is warranted under section 776(b) of the Act. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from*

Japan, 65FR42985 (July 12, 2000) (the Department applied total adverse facts available where respondent failed to respond to the antidumping questionnaires).

Indonesia

In accordance with section 776 of the Act, for the reasons explained below, we preliminarily determine that the use of total adverse facts available is warranted with respect to Indonesia. The Department issued partial section A antidumping duty questionnaires (partial A questionnaires) to the following thirteen respondents on August 18 and August 23, 2000: PT Gunung Gahapi Sakti (Sakti), PT Jakarta Kyoei Steel Works Ltd. (Jakarta Steel Group) (Kyoei), PT The Master Steel Manufacturing Co., (Master Steel), PT Hanil Jaya Metal Works (Hanil), PT Bhirma Steel (Bhirma), PT Inter World Steel Mills Indonesia (Inter World), Jakarta Steel Megah Utama (Jakarta Steel Group) (Megah Utama), PT Jakarta Steel Perdana Industri (Jakarta Steel Group) (Perdana), Krakatau Wajatama (Krakatau), PT Jakarta Cakra Tunggal (Tunggal), PT Pulogadung Steel (Pulogadung), PT Gunung Gahapi Bahara (Gahapi), and PT Gunung Garuda (Garuda). On August 18, 2000, the Department issued a partial section A questionnaire to the Association of Indonesian Steel Billet and Concrete Producers and requested that it forward the questionnaire to any other known producers/exporters of rebar. The Department established August 28, 2000, as the deadline for responding to the partial section A questionnaires.

By the August 28, 2000, deadline, the Department had received responses from the following six companies: Kyoei, Inter World, Megah Utama, Gahapi, Garuda and Master Steel. Of the six timely responding companies, Master Steel was the only company to report exports of rebar to the United States during the POI. We conducted a Customs data query and confirmed the no shipments claims made by the remaining five companies listed above.

On August 30, 2000, the Department issued a complete antidumping questionnaire to Master Steel. In addition, on August 30, 2000, the Department received a no shipment response from Tunggal.

On September 4, 2000, Pulogadung mailed a no shipment response to the Department. However, the response did not reach the appropriate Department officials until September 7, 2000. On September 11, 2000, Hanil sent a no shipment response to the Department. Therefore, as discussed below, the Department sent Pulogadung and Hanil two FA letters, the first addressing no response and the second addressing late response.

On September 6, 2000, the Department notified the following five companies that their ''no shipment'' responses were subject to verification and that, if shipments were ultimately discovered, the Department may have to rely upon facts available in making its determinations in this proceeding: Kyoei, Inter World, Megah Utama, Gahapi, and Garuda. In addition, on September 6, 2000, the Department notified the following six non-responsive companies that the Department had not received their partial section A questionnaire responses and that, as a result, the Department would have to rely upon FA in making its determinations in this proceeding: Sakti, Bhirma, Krakatau, Perdana, Hanil, and Pulogadung.

On September 13, 2000, the Department notified Tunggal, Pulogadung and Hanil, that the Department had not received their partial A responses by the August 28, 2000, deadline and that, as a result, the Department would have to rely upon FA in making its determinations in this proceeding.

In October 2000, Master Steel submitted its sections A, B, C, and D questionnaire responses. In the initial response to our antidumping questionnaire, we found that substantial information in the questionnaire remained unanswered. Master Steel failed to provide: (1) The transfer price, cost of production or market price of the major input received from its affiliate, (2) product-specific costs, (3) the quantity of each control number produced during the POI, (4) POI specific costs, (5) costs on the same weight and currency basis as home market sales, (6) worksheets showing its calculation of the general and administrative expense ratio and the financial expense ratio, (7) an explanation concerning affiliation issues, (8) accurate control numbers (CONNUMs), (9) an explanation of zero values for certain selling expenses, (10) clarification concerning the appropriateness of the reported U.S. sales date, (11) home market (HM) shipment dates, (12) accurate HM payment dates, (13) an explanation and reconciliation of HM and U.S. imputed credit expenses, (14) an explanation of missing product specifications, (15) clarification concerning U.S. inland freight, and (16) an explanation of its reported packing expenses. *See* October 23, 2000, and November 2, 2000, supplemental questionnaires.

Master Steel's failure to provide this information resulted in an incomplete and unreliable cost response and home market and U.S. sales listings, and an inaccurate total quantity and value for Master Steel's POI sales. In order to address these and other deficiencies, we issued supplemental questionnaires on October 23, and November 2, 2000, as noted above. On November 7, 2000, Master Steel submitted a timely response to the Department's October 23, 2000, section A supplemental questionnaire. On November 9, 2000, via email, Master Steel requested an eighteen day extension of time for filing its response to the Department's November 2, 2000, supplemental questionnaire (supplemental questionnaire). On November 14, 2000, in response to Master Steel's November 9, 2000, extension request, and after receiving several improperly submitted submissions (*i.e.* submissions that were presented via facsimile and email), the Department sent Master Steel a letter granting it an extension until November 20, 2000. In addition, the letter once again reiterated the Department's requirement that all documents submitted to the Department must be properly filed and served on all interested parties, in accordance with 19 CFR 351.103 (b) and 19 CFR 351.303. The Department informed Master Steel that it would no longer accept submissions that were not officially submitted to and stamped by the Central Records Unit (CRU) with the date and time of receipt. *See* Letter from the Department of Commerce (November 14, 2000). The November 14, 2000, letter, as well as the Department's previous letters, also advised Master Steel of the potential repercussions (*i.e.,* rejection of responses, use of FA) that could occur from its failure to abide by the Department's filing requirements.

On November 17, 2000, Master Steel, via facsimile, requested yet another extension of time to file its supplemental questionnaire response. Although this extension request was improperly submitted, the Department decided to grant it until November 27, 2000, in case Master Steel had not received the Department's November 14, 2000, letter prior to sending its November 17, 2000, facsimile requesting an extension.

On November 23, 2000, Master Steel, via facsimile, requested another extension of time to file its response to the Department's November 2, 2000, supplemental questionnaire. On November 30, 2000, the Department granted Master Steel an extension until December 1, 2000, to file its response. In addition, the November 30, 2000,

letter noted the improper submission of Master Steel's most recent extension request and stated that this extension would be the last extension granted for Master Steel to respond to the Department's supplemental questionnaire. The Department explained that it was not in a position to grant any further extensions to Master Steel because of the impending deadline for publication of the preliminary determination, the fact that there would not be sufficient time to analyze the Master Steel responses, and the inadequate time to issue supplemental questionnaires regarding any information that Master Steel would have submitted.

However, despite the Department's explanation of the proper filing requirements in its previous extension letters, on December 5, 2000, Master Steel submitted an untimely response to sections B, C, and D of the Department's supplemental questionnaire.

In accordance with section 776(a) of the Act, we have determined that the use of adverse FA is warranted for Sakti, Bhirma, Krakatau, Perdana, Hanil, Pulogadung, Tunggal and Master Steel. Sakti, Bhirma, Krakatau, and Perdana failed to respond to the Department's partial A questionnaire. Hanil, Pulogadung and Tunggal failed to respond to the Department's partial section A questionnaire by the applicable deadline. Because these respondents failed to provide the requested quantity and value information by the applicable deadline, the Department must use FA, in accordance with section 776(a) of the Act. The Department has also determined that because these companies either failed to respond to the partial section A questionnaire, or failed to respond in a timely manner to the partial section A questionnaire, they did not act to the best of their ability to comply with the Department's request for information. Without completed questionnaire responses, the Department lacks critical information that is necessary to the dumping calculation and cannot determine an accurate dumping margin. Therefore, in accordance with section 776(b) of the Act, the Department has used an adverse inference in determining a margin for these companies.

With respect to Master Steel, Master Steel failed to provide, within the applicable deadlines, its responses to the Department's supplemental questionnaires. *See Memorandum Regarding the Application of Adverse Facts Available to Master Steel,* dated, January 16, 2001 (*Master Steel FA Memo*). Despite the Department's repeated attempts, pursuant to section 782(d) of the Act, to obtain the missing information, Master Steel failed to respond in a timely manner. As a result, we do not have a reliable home market or U.S. sales listing to use for comparison purposes in accordance with our practice. In addition, we also question whether Master Steel provided the appropriate date of sale for its reported U.S. sales. Moreover, Master Steel submitted an incomplete cost response, with deficiencies concerning such issues as product specific costs, costs for major inputs received from affiliated parties, and the quantity of specific CONNUMs produced during the POI. *See Master Steel FA Memo.* Master Steel did not notify the Department that it would be unable to submit the requested information, nor did it provide any explanation or propose an alternate form of submitting the required data, pursuant to section 782(c)(1) of the Act. *See Master Steel FA Memo.*

We are unable, under the application of section 782(e), to use the company-specific information contained in the responses we did receive from Master Steel, given that the deadline for submitting the supplemental questionnaire responses has passed, and the responses currently on record are so incomplete that they cannot serve as a reliable basis for reaching the applicable determination. *See Master Steel FA Memo.*

Because the information that Master Steel failed to report is critical for purposes of the preliminary dumping calculations, the Department must resort to facts otherwise available in reaching its preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act.

We also find that the application of an adverse inference in this case is appropriate. Master Steel failed to provide critical data regarding COP, affiliations, accurate control numbers, explanation of zero values for certain selling expenses, HM shipment dates, accurate HM payment dates, and *inter alia* clarification regarding its choice for date of sale. Moreover, despite the Department's directions in the questionnaires and the numerous extensions granted, Master Steel made no effort to provide any explanation or propose an alternate form of submitting the data. *See Master Steel FA Memo.* For these reasons, we find that Master Steel did not act to the best of its ability in responding to the Department's requests for information, *see, e.g., Circular Stainless Steel Hollow Products,* and that, consequently, an adverse inference is warranted under section 776(b) of the Act. *See Master Steel FA Memo.*

Ukraine

In accordance with sections 776(a) and (b) of the Act, for the reasons explained below, we preliminarily determine that the use of total adverse facts available is warranted with respect to Krovoi Rog State Mining and Metal Works (Krivorozhstal). On August 18, 2000, the Department issued a nonmarket economy questionnaire to the Embassy of Ukraine in Washington, DC and, concurrently, to the five known Ukrainian producers of rebar. Questionnaires were sent, specifically, to Dneprovsky Iron and Steel Works (Dneprovsky), Makeevsky Iron and Steel Works, Kramatorsk Iron and Steel Works, Yenakievsky Iron and Steel Works, and Krivorozhstal. By the extended September 22, 2000, deadline for responding to the Department's section A questionnaire, we received responses from Dneprovsky and Krivorozhstal. Dneprovsky stated that the company does not export rebar to the United States. The Department received quantity and value data from Krivorozhstal and selected Krivorozhstal as the sole mandatory respondent in the Ukraine case. Krivorozhstal, over the course of this proceeding, has not provided the Department with complete, documented, product-specific factors of production information. Accordingly, we are relying on the facts otherwise available for purposes of the preliminary determination.

The questionnaire sent to Krivorozhstal on August 18, 2000, described in detail how respondents should report factors of production data for intermediate products produced by separate production processes. On October 10, 2000, Krivorozhstal submitted a section D questionnaire response with incomplete factors of production data. On October 26, pursuant to section 782(d) of the Act, the Department issued a supplemental questionnaire and reminded Krivorozhstal of its obligation to provide complete factors of production data. On November 9, 2000, Krivorozhstal responded to the Department's supplemental questionnaire and, again, failed to provide complete factors of production information. Krivorozhstal's November 9, 2000, response, while providing some additional data, did not properly document and support with narrative explanation these additional factors of production data, again did not provide the Department with product-specific factors of production and, finally, did not propose an appropriate

alternative methodology for deriving product-specific factors of production. *See Decision Memorandum to Troy Cribb Regarding the Use of Facts Available for the Antidumping Investigation of Steel Concrete Reinforcing Bars from Ukraine (Ukraine FA Memo*) (January 16, 2001) for further detail regarding the inadequacy of Krivorozhstal's submitted data.

Because Krivorozhstal has refused to provide the Department with a full accounting of its factors of production, the Department must use facts available under sections 776(a)(2)(A) of the Act, and (B) of the Act. In addition, we consider that Krivorozhstal has not acted to the best of its ability to provide complete factors of production information, since, as explained above, Krivorozhstal has failed to provide basic information readily at its disposal.

2. Selection and Corroboration of Facts Available

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870).

In order to determine the probative value of the margins in the petitions for use as adverse facts available for purposes of this determination, we examined evidence supporting the calculations in the petitions. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the (EP) and normal value (NV) calculations on which the margins in the petitions were based. Our review of the EP and NV calculations indicated that the information in the petitions has probative value, as certain information included in the margin calculations in the petitions is from public sources concurrent, for the most part, with the relevant POI. For purposes of the preliminary determination, we attempted to further corroborate the information in the petition. We re-examined the EP and NV data which formed the basis for the highest margin in the petition in light of information obtained during the investigation and, to the extent practicable, found that it has probative value (*see* the January 16, 2001, memoranda to the file regarding *Application of Facts Available for Huta Ostroweic, S.A. and Stalexport, S.A.; Master Steel FA Memo; Corroboration of the Petition Data for Indonesia* at section C; and *Ukraine FA Memo* on file in the Central Records Unit, Room B–099, of the Main Commerce Department building).

Accordingly, in selecting adverse facts available with respect to Stalexport, the Department determined to apply a constructed value margin rate of 52.07 percent, the highest margin alleged for Poland in the petitioner's July 10, 2000, addendum to the petition. For Indonesia, as FA for Sakti, Bhirma, Krakatau, Perdana, Hanil, Pulogadung and Master Steel, the Department applied a constructed value margin rate of 71.01 percent, the highest margin alleged for Indonesia in the petitioner's July 10, 2000, addendum to the petition. For Ukraine, inasmuch as we have been unable to rely on Krivorozhstal's questionnaire responses, we have not determined whether Krivorozhstal warrants a separate rate. We have assigned to all exports of subject rebar from the Ukraine a country-wide rate of 41.69 percent, the single margin alleged in the petitioner's July 10, 2000, addendum to the petition.

Separate Rates—Ukraine. It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent from government control so as to be entitled to a separate rate. In the case involving Ukraine, the single respondent company, Krivorozhstal, has claimed to be sufficiently independent to warrant a separate rate. However, since, as explained above, Krivorozhstal has impeded the Department's investigation, we have not made a determination as to whether Krivorozhstal merits a separate rate, and are assigning a single country-wide rate for all exporters of subject merchandise from Ukraine.[5]

[5] We note that, inasmuch as the petition contains only a single margin, the same rate would apply to Krivorozhstal and all other exporters of subject merchandise from Ukraine, even if Krivorozhstal had been assigned a separate rate. In the event that the Department is able to base its final determination on the data submitted by Krivorozhstal rather than on the facts otherwise available, the Department will determine whether Krivorozhstal merits a separate rate.

All Others—Poland and Indonesia. Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated ''all others'' rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than facts available margins to establish the ''all others'' rate. Where the data do not permit weight-averaging such rates, the SAA, at 873, provides that we may use other reasonable methods. With respect to Poland and Indonesia, because there is no other information on the record on which to base an ''all others'' rate, consistent with the Department's practice, we have based the ''all others'' rate on the simple average of the rates provided by the petitioner. *See, e.g., Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand*, 65 FR 5520, 5528 (February 4, 2000).

Final Critical Circumstances Determinations

We will make a final determination concerning critical circumstances for Poland and Ukraine when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 75 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of rebar from Indonesia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In the case of Poland and Ukraine, because of our preliminary affirmative critical circumstances findings in these cases, and in accordance with section 733(e) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of rebar from Poland and Ukraine that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. For Poland, Indonesia and Ukraine, we are also instructing the Customs Service to require a cash deposit or the posting of

a bond equal to the dumping margin, as indicated in the chart below.

These instructions suspending liquidation will remain in effect until further notice.

Manufacturer/exporter	Margin (percent)
Poland:	
Huta Ostrowiec S.A. ("Stalexport")	52.07
All Others	47.13
Indonesia:	
Sakti	71.01
Bhirma	71.01
Krakatau	71.01
Perdana	71.01
Hanil	71.01
Pulogadung	71.01
Tunggal	71.01
Master Steel	71.01
All Others	60.46
Ukraine:	
Ukraine-Wide Rate	41.69

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in these investigations in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If our final antidumping determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of these preliminary determinations or 45 days after the date of our final determinations.

Public Comment

For the investigations of steel concrete reinforcing bars from Poland, Indonesia, and Ukraine, case briefs must be submitted no later than 35 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five business days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several rebar cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If these investigations proceed normally, we will make our final determinations in the investigations of steel concrete reinforcing bars from Poland, Indonesia and Ukraine no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: January 16, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 01–2522 Filed 1–29–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–844]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Jeff Pedersen at (202) 482–3936 and (202) 482–4195, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (2000).

Preliminary Determination

We preliminarily determine that steel concrete reinforcing bars (rebar) from the Republic of Korea (Korea) are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the **SUSPENSION OF LIQUIDATION** section of this notice.

Case History

This investigation was initiated on July 18, 2000.[1] *See Initiation of Antidumping Duty Investigations: Steel Concrete Reinforcing Bars from Austria, Belarus, Indonesia, Japan, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, the Russian Federation, Ukraine, and Venezuela,* 65 FR 45754 (July 25, 2000) (*Initiation Notice*). Since the initiation of these investigations, the following events have occurred.

On August 14, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation are threatening material injury or materially injuring a regional industry in the United States producing the domestic like product. *See Certain Steel Concrete Reinforcing Bars From Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela,* 65 FR 51329 (August 23, 2000). With respect to subject imports from Austria, Russia, and Venezuela, the ITC determined that imports from these countries during the period of investigation (POI) were negligible and, therefore, these investigations were terminated. The ITC also determined that there is no reasonable indication that an industry in the United States is

[1] The petitioner in these investigations is the Rebar Trade Action Coalition (RTAC), and its individual members, AmeriSteel, Auburn Steel Co., Inc., Birmingham Steel Corp., Border Steel, Inc., Marion Steel Company, Riverview Steel, and Nucor Steel and CMC Steel Group. (Auburn Steel was not a petitioner in the Indonesia case).

materially injured or threatened with material injury, by reason of subject imports from Japan. *Id.*

The Department issued antidumping questionnaires to the three mandatory respondents in Korea on August 18, 2000.[2] We received responses from two companies, Dongkuk Steel Mill Co., Ltd. (DSM) and Korea Iron & Steel Co., Ltd. (KISCO). The third respondent, Hanbo Iron & Steel Co., Ltd. (Hanbo) did not respond to our questionnaire. We confirmed with Federal Express that Hanbo did receive our questionnaire (*see* Memorandum from Jeff Pedersen to the File, dated January 16, 2001). On September 14, 2000, we notified Hanbo that we had not received its questionnaire response and that, as a result, the Department may have to rely on facts available in making our determinations in this proceeding. We issued supplemental questionnaires pertaining to sections A, B, C, and D of the antidumping questionnaire to DSM and KISCO in September, October, November, and December 2000. DSM and KISCO responded to these supplemental questionnaires in October, November, and December 2000.

DSM and KISCO requested that they not be required to report certain information requested in the questionnaires. Specifically they requested that they be permitted to exclude three types of data. First, on September 20, 2000, DSM and KISCO reported that they each purchased a small quantity of rebar from each other, which was resold to unaffiliated home market customers. DSM and KISCO also reported that they purchased a small quantity of rebar from unaffiliated suppliers, which was resold to unaffiliated home market customers. Since their accounting systems do not identify which resales of purchased rebar related to purchases from affiliated suppliers and which related to purchases from unaffiliated suppliers, DSM and KISCO stated that their accounting systems prevent them from reporting the downstream sales of rebar purchased from affiliated suppliers (*i.e.,* each other). Therefore, DSM and KISCO requested that they be allowed to report the upstream sale from DSM to KISCO, and vice versa, while being allowed to exclude the downstream sale to the unaffiliated customer.

Second, DSM and KISCO stated in their section A responses that they have not reported their home market sales of rebar purchased from unaffiliated suppliers because such rebar does not fall within the definition of the ''foreign like product.'' DSM and KISCO contend that ''foreign like product'' is defined as merchandise ''produced in the same country by the same person as the subject merchandise.'' Since they did not produce the rebar in question, DSM and KISCO did not include these home market sales in their reported sales listing.

Lastly, in the September 20, 2000, submission, KISCO requested that it be allowed to exclude certain U.S. market sales of rebar that were cut to length and then repacked in Korea by its affiliate, Pusan Steel Mill Co., Ltd. (PSM), prior to export. According to KISCO, these sales account for a tiny portion of its U.S. market sales, are not typical of KISCO's normal course of business, and would complicate the Department's dumping analysis.

On September 29, 2000, the Department issued to DSM and KISCO a supplemental questionnaire concerning these exclusion requests. We received their joint response on October 23, 2000. The information contained in this response, in addition to information contained in DSM and KISCO's responses to the antidumping questionnaire, indicated that the sales covered by these exclusion requests were not representative of normal selling behavior, were made in such small volumes that they would have an insignificant effect on the calculation, and, if not excluded, would unduly complicate the Department's analysis. Therefore, we granted the three exclusion requests discussed above. *See* Letter from Thomas F. Futtner, Acting Office Director, to DSM and KISCO, dated November 6, 2000.

On November 9, 2000, the petitioner requested a postponement of the preliminary determination in this investigation. On November 21, 2000, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until January 16, 2001. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea and Ukraine,* 65 FR 69909 (November 21, 2000).

Postponement of the Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On December 28, 2000, DSM and KISCO requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. DSM and KISCO also included a request to extend the provisional measures to not more than 135 days after the publication of the preliminary determination. Accordingly, since we have made an affirmative preliminary determination, and the requesting parties account for a significant proportion of exports of the subject merchandise, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination.

Period of Investigation

The POI for this investigation is April 1, 1999, through March 31, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* June 2000).

Scope of Investigations

For purposes of these investigations, the product covered is all rebar sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.,* non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits us to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data for all of 1999 and the first half of 2000, which we obtained from the American Embassy in Seoul, we found that four Korean exporters shipped rebar to the United States during that time period. Due to limited resources we determined that we could investigate only the three largest producers. *See* Memorandum from Valerie Ellis and Paige Rivas to Holly A. Kuga, Selection of Respondents, dated August 25, 2000. Therefore, we designated DSM, KISCO, and Hanbo as mandatory respondents and sent them the antidumping questionnaire. On September 18, 2000, we received section A questionnaire responses from DSM and KISCO. We did not, however, receive a response from Hanbo.

Facts Available (FA)

Section 776(a) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'' The statute requires that certain conditions be met before the Department may resort to the facts otherwise available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

In this proceeding, Hanbo declined to respond at all to the Department's antidumping questionnaire. Because Hanbo provided no information whatsoever, sections 782(d) and (e) of the Act are not relevant, and the Department must resort to the use of facts available for this respondent, in accordance with 776(a) of the Act. Moreover, we note that at no time did Hanbo contact the Department and state that it was having difficulty responding to the questionnaire or otherwise explain why it could not provide the requested information. Thus, we have also determined that this respondent has not cooperated to the best of its ability. Therefore, pursuant to 776(b) of the Act, we used an adverse inference in selecting a margin from the FA. As FA, the Department has applied a margin rate of 102.28 percent, the highest alleged margin for Korea in the petition. *See* Memorandum from Holly A. Kuga to Troy H. Cribb, Antidumping Investigation of Steel Concrete Reinforcing Bars From The Republic of Korea—The Use of Facts Available for Hanbo Iron & Steel Co. Ltd., and Corroboration of Secondary Information, dated January 16, 2001 (*Facts Available Memorandum*).

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No.316, 103d Cong., 2d Sess. (1994) (hereinafter, the SAA) states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870.

In this proceeding, we considered the petition information the most appropriate record information to use to establish the dumping margins for this uncooperative respondent because, in the absence of verifiable data provided by Hanbo, the petition information is the best approximation available to the Department of Hanbo's pricing and selling behavior in the U.S. market. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.,* import statistics and foreign market research reports). *See Initiation Notice.*

For purposes of this preliminary determination, we attempted to corroborate the information in the petition with information gathered since the initiation. We compared the export price (EP) and CV data which formed the basis for the highest margin in the petition to the price and expense data provided by DSM and KISCO during the investigation and, to the extent practicable, found that it had probative value (*see Facts Available Memorandum*).

Critical Circumstances

In the petition filed on June 28, 2000, the petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of rebar from Korea. On July 18, 2000, concurrent with the initiation of the LTFV investigations on imports of rebar from Korea and other countries, the Department announced its intention to investigate the petitioner's allegation that critical circumstances exist with respect to imports of rebar from Korea. On August 14, 2000, the ITC determined that there is a reasonable indication of material injury to a regional domestic industry from imports of rebar from Korea.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist, if: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject

merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the ''relatively short period'' of time may be considered ''massive.''

Because we are not aware of any existing antidumping order in any country on rebar from Korea, we do not find a history of dumping from Korea, pursuant to section 733(e)(1)(A)(i) of the Act. Further, with respect to section 733(e)(1)(A)(i) of the Act, the magnitude of the dumping margins found in this preliminary determination with respect to DSM, Kisco, and the producers of subject merchandise in the ''all others'' category, are insufficient to conclude that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling subject merchandise at LTFV and that there was likely to be material injury by reason of such sales.

With respect to DSM, KISCO and producers of subject merchandise in the ''all others'' category, we find (*see* below) that they do not satisfy the statutory criterion regarding massive imports necessary for an affirmative finding of critical circumstances, section 733(e)(1)(B) of the Act. Therefore, we did not address the issue of whether importers had knowledge that DSM, KISCO and the ''all others'' companies were selling the subject merchandise at less than its fair value.

As mentioned above, Hanbo was selected as a mandatory respondent in this investigation and did not respond to our antidumping questionnaire, nor provide the requested shipment data necessary for our critical circumstances analysis. On September 14, 2000, we notified Hanbo that we had not received its questionnaire response and that, as a result, the Department may have to rely on facts available in making our determinations in this proceeding. With respect to imports of subject merchandise sold by Hanbo, we have determined the preliminary dumping margin to be 102.28 percent (based on adverse facts available). This margin exceeds the 25 percent threshold used by the Department to impute knowledge that the subject merchandise was causing injury. Therefore, pursuant to section 733(e)(1)(A)(ii) of the Act, we find that there is a reasonable basis to believe or suspect that importers knew or should have known that rebar imports from Hanbo were being sold at less than fair value and there was likely to be material injury by reason of such sales.

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volume of the subject merchandise for three months immediately preceding the filing of the petition (*i.e.,* the base period), and three months following the filing of the petition (*i.e.,* the comparison period). However, as stated in section 351.206(i) of the Department's regulations, if the Secretary finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

In this case, the petitioner argues that importers, exporters, or producers of rebar from Korea had reason to believe that an antidumping proceeding was likely before the filing of the petition. Based upon information contained in the petition, we found that press reports and published statements were sufficient to establish that, by December 1999, importers, exporters, and foreign producers knew or should have known that a proceeding was likely concerning rebar from Korea. As a result, the Department has considered whether there have been massive imports after that time, based on a comparison of periods immediately preceding and following the end of December 1999. *See* Memorandum from Tom Futtner to Holly A. Kuga, Antidumping Duty Investigation of Steel Concrete Reinforcing Bars from Korea—Preliminary Determination of Critical Circumstances (*Critical Circumstances Preliminary Determination Memorandum*), dated January 16, 2001.

In order to determine whether imports from Korea have been massive, the Department requested that DSM, KISCO and Hanbo provide their shipment data for the last three years. We note that we have collapsed DSM and KISCO into a single entity for purposes of this antidumping investigation (*see* the Collapsing section below). Therefore, we conducted our analysis on the shipment volumes from the collapsed entity DSM/KISCO. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil,* 65 FR 5554, 5561 (February 4, 2000). Based on our analysis of the shipment data reported, because imports have decreased during the comparison period, we preliminarily find that the criterion under section 733(e)(1) of the Act has not been met, *i.e.,* there have not been massive imports of rebar from DSM/KISCO over a relatively short time. *See Critical Circumstances Preliminary Determination Memorandum.* For this reason, we preliminarily determine that critical circumstances do not exist for imports of rebar produced by DSM/KISCO.

With respect to imports of this merchandise from producers in the ''all others'' category, it is the Department's normal practice to conduct its critical circumstances analysis of companies in this category based on the experience of the investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey,* (*Rebar from Turkey*) 62 FR 9737, 9741 (Mar. 4, 1997). In *Rebar from Turkey,* the Department found critical circumstances for the ''all others'' category because it found critical circumstances for three of the four companies investigated. However, as we more recently determined in *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan,* 64 FR 24329 (May 6, 1999) (*Hot-Rolled Steel from Japan*), we are concerned that literally applying that approach could produce anomalous results in certain cases. Thus, in deciding whether critical circumstances apply to companies covered by the ''all others'' rate, the Department also considers the traditional critical circumstances criteria.

In determining whether imports from the ''all others'' category have been massive, the Department followed its normal practice of conducting its critical circumstances analysis of companies in this category based on the experience of the investigated companies. In this case, we note that DSM/KISCO account for the majority of rebar exports from Korea. *See Critical Circumstances Preliminary Determination Memorandum.* For this reason, it is appropriate to extend the experience of DSM/KISCO to the ''all others'' category and determine that there have not been massive imports of rebar from the ''all others'' category over a relatively short time. Since the second

criterion under section 733(e)(1) of the Act has not been met, we find that critical circumstances do not exist for imports of rebar produced by the ''all others'' category.

With regard to Hanbo, we note that since Hanbo refused to respond to the Department's antidumping questionnaire, there is no verifiable information on the record with respect to Hanbo's export volumes. For this reason, we must use the facts available in accordance with section 776(a) of the Act in determination of whether there were massive imports of merchandise produced by Hanbo. With regard to aggregate import statistics, these data do not permit the Department to ascertain the import volumes for any individual company that failed to provide verifiable information. Nor do these data reasonably preclude an increase in shipments of 15 percent or more within a relatively short period for Hanbo. As a result, in accordance with section 776(b) of the Act, we have used an adverse inference in applying facts available, and determine that there were massive imports from Hanbo. Since we also find that, pursuant to section 733(e)(1)(A)(ii) of the Act, there is a reasonable basis to believe or suspect that importers knew or should have known that rebar imports from Hanbo were being dumped and there was likely to be material injury by reason of such sales, we preliminary determine that critical circumstances exist with respect to imports of rebar produced by Hanbo.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the Scope of Investigation section, above, and sold in Korea during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on three criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product or CV: Type of steel, yield strength, and size. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

Collapsing

Section 771(33)(E) of the Act provides that ''affiliated persons'' include ''any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.'' Furthermore, under section 351.401(f) of the Department's regulations, we will treat ''two or more affiliated producers as a single entity where those producers (1) have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and (2) the Secretary concludes that there is significant potential for the manipulation of price or production'' based on factors such as: (a) The level of common ownership; (b) the extent to which managerial employees or board members of one firm sit on the board of the other firm; and (c) whether operations are intertwined (*e.g.,* through sharing of sales information, involvement in production and pricing decisions, sharing facilities/employees, and/or significant transactions between the two affiliated producers).

In this case, it is undisputed that DSM owns over 5 percent of KISCO's outstanding equity. Thus, DSM and KISCO are affiliated as defined by section 771(33)(E) of the Act. Regarding the first collapsing criterion listed in section 351.401(f) of the Department's regulations, DSM and KISCO stated that both companies ''produce the same grades of rebar . . . {and} there were no grades that were produced by one company but not the other.'' In addition, both companies stated that ''there are no significant differences in the production processes used by DSM and KISCO to produce rebar.'' *See* DSM and KISCO's October 23, 2000, submission at 46 and 47. In addition, we note that DSM and KISCO's U.S. market sales of rebar (by quantity) are not large percentages of their total home market sales of rebar. For this reason, we conclude that both companies potentially have the capacity to absorb the other's export market sales, in the event they were to shift export sales to the company with a lower margin. In analyzing whether there exists the potential for manipulation of price or production, we note that in addition to DSM's direct ownership of KISCO, DSM has a significant level of indirect ownership of KISCO through the Chang family, which founded both DSM and KISCO. Concerning the extent to which DSM and KISCO have shared managerial employees and board members, we note that two of KISCO's current senior managers are former senior managers at DSM, and that one of DSM's current senior managers was a former director at KISCO. Lastly, we note that DSM and KISCO have intertwined operations because both companies sold a small amount of rebar to each other in the home market, which entailed the sharing of certain sales information, and used the same affiliated transportation company for certain home market sales.

Based on these reasons, we find that DSM and KISCO are affiliated producers with similar or identical production facilities that would not require substantial retooling of either facility in order to restructure manufacturing priorities. We also find that there exists a significant potential for the manipulation of price or production. For further discussion, *see* Decision Memorandum: Whether to Collapse Dongkuk Steel Mill Co., Ltd. and Korea Iron and Steel Co., Ltd. Into a Single Entity, dated December 5, 2000. Therefore, we have collapsed DSM and KISCO, and are treating them as a single entity (hereafter referred to as DSM/KISCO) for purposes of the preliminary determination in this antidumping investigation.

Fair Value Comparisons

To determine whether sales of rebar from Korea were made in the United States at LTFV, we compared the EP or the constructed export price (CEP) to the normal value (NV), as described in the EP and CEP and NV sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs. We compared these to weighted-average home market prices.

EP and CEP

For the price to the United States, we used, as appropriate, EP or CEP as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the exporter or producer outside the United States to an unaffiliated purchaser for exportation to the United States, before the date of importation, or to an unaffiliated purchaser for exportation to the United States.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold inside the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under subsections 772(c) and (d) of the Act.

For DSM/KISCO, we calculated EP and CEP, as appropriate, based on the packed prices charged to the first unaffiliated customer in the United States. During the POI, DSM/KISCO made both EP and CEP transactions. We

calculated an EP for sales where DSM/KISCO sold the merchandise directly to unaffiliated U.S. customers and where DSM/KISCO sold the merchandise to unaffiliated Korean companies, with knowledge that these companies in turn sold the merchandise to U.S. customers. We also calculated an EP for sales to PSM,[3] an affiliated Korean company, who in turn sold the merchandise to U.S. customers. We calculated a CEP for sales where DSM/KISCO sold the merchandise to its U.S. affiliate, Dongkuk International Inc. (DKA), who then resold the merchandise to unaffiliated U.S. customers. We also calculated a CEP for sales made by DSM/KISCO to an affiliated home market company, Dongkuk Industries Co. Ltd. (DKI), who in turn sold the merchandise to DKA, who then sold the merchandise to unaffiliated U.S. customers.

We calculated EP in accordance with section 772(c)(1)(B) of the Act, by adding, where applicable, to the starting price an amount for duty drawback. We also deducted from the starting price, where applicable, amounts for discounts and rebates. We made deductions, where applicable, from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include, where appropriate, foreign inland freight, international freight, foreign and U.S. brokerage and handling charges, insurance, U.S. duties and U.S. inland freight. We adjusted the reported credit expense to reflect a more accurate shipping period. *See* Calculation Memorandum of the Preliminary Determination for the Investigation of Dongkuk Steel Mill Co., Ltd., and Korea Iron & Steel Co., Ltd., January 16, 2001 (*Preliminary Calculation Memorandum*).

We calculated CEP, in accordance with section 772(c)(2)(A) of the Act, by adding, where applicable, to the starting price an amount for duty drawback. We also deducted from the starting price, where applicable, amounts for discounts and rebates, and movement expenses from the starting price. Movement expenses include, where appropriate, foreign inland freight, international freight, foreign and U.S. brokerage and handling charges, insurance, U.S. duties, and U.S. inland freight. In accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (commissions and credit costs) and indirect selling expenses. We adjusted the reported credit expense to reflect a more accurate shipping period. *See Preliminary Calculation Memorandum.* Finally, in accordance with section 772(d)(3) of the Act, we made a deduction for CEP profit.

NV

A. Selection of Comparison Market

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

For this investigation, we found that DSM/KISCO has a viable home market of rebar. The respondents submitted home market sales data for purposes of the calculation of NV.

In deriving NV, we made adjustments as detailed in the Calculation of NV Based on Home Market Prices and Calculation of NV Based on CV, sections below.

B. Affiliated-Party Transactions and Arm's-Length Test

During the POI, DSM sold a small amount of rebar to KISCO, who then resold the merchandise to unaffiliated home market customers. Similarly, KISCO sold a small amount of rebar to DSM, who then resold the merchandise to unaffiliated home market customers. Since we have collapsed these two companies into a single entity, we requested that DSM and KISCO remove these sales, which we considered to be inter-company sales, from their home market sales database.

During the POI, DSM/KISCO also had home market sales to other affiliated companies. Both DSM and KISCO had home market sales to DKI, an affiliated Korean company that consumed rebar in its construction division, while KISCO had home market sales to PSM, an affiliated home market company that also consumed rebar during the POI. *See* DSM/KISCO's September 18, 2000, section A response at 3. We applied the arm's-length test to sales from DSM/KISCO to these affiliated companies by comparing them to sales of identical merchandise from DSM/KISCO to unaffiliated home market customers. If these affiliated party sales satisfied the arm's-length test, we used them in our analysis. Sales to affiliated customers in the home market which were not made at arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102.

To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all discounts and rebates, movement charges, direct selling expenses, commissions, and home market packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's-length. *See* 19 CFR 351.403(c) and 62 FR at 27355, *Preamble—Department's Final Antidumping Regulations* (May 19, 1997).

A. COP Analysis

On June 28, 2000, the petitioner alleged that sales of rebar in the home market of Korea were made at prices below the fully absorbed COP, and accordingly, requested that the Department conduct a country-wide sales-below-COP investigation. Based upon the comparison of the adjusted prices from the petition for the foreign like product to its COP, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of rebar manufactured in Korea were made at prices below the COP. See Initiation Notice. As a result, the Department has conducted an investigation to determine whether DSM/KISCO made sales in the home market at prices below its COP during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of COP. In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market general and administrative (G&A) expenses and interest expenses.

We relied on the COP data submitted by DSM and KISCO in their cost questionnaire responses, except, as noted below, in specific instances where the submitted costs were not appropriately quantified or valued. Since we collapsed DSM and KISCO, and are treating them as a single entity for the purposes of this antidumping investigation, we merged their

[3] Although the Department granted DSM/KISCO its exclusion request concerning its U.S. sales through PSM, DSM/KISCO reported these sales in its U.S. sales database.

separately reported cost databases into a single, combined cost database by weight-averaging DSM and KISCO's individually reported costs. We used the combined costs in our dumping analysis. *See Preliminary Calculation Memorandum.*

DSM. We adjusted DSM's G&A expense ratio to exclude gain on disposal of land, freight revenue, gain on equity method investments and gain on insurance settlement and to include donation expenses in the calculation of the G&A expense ratio.

In addition, we adjusted DSM's financial expense ratio to exclude the long-term portion of exchange gains and losses generated by foreign currency denominated debt. *See* Memorandum from Robert Greger, dated January 16, 2001.

KISCO

We adjusted KISCO's G&A expense ratio to: (1) Exclude the ''non-operating income from the gain on equity method valuation,'' from the miscellaneous gains section of KISCO's financial statement; and (2) included donation expenses in the calculation of the G&A expense ratio.

Further, we adjusted KISCO's financial expense ratio to exclude the long-term portion of exchange gains and losses generated by foreign currency denominated debt. *See* Memorandum from Michael Harrison, dated January 16, 2001.

2. Test of Home Market Sales Prices. We compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.,* a period of one year) in substantial quantities [4] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable discounts and rebates, movement charges, selling expenses, commissions, and packing.

3. Results of the COP Test. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) or the Act. In such cases, because we compared prices to POI average costs, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that, for certain models of rebar, more than 20 percent of the home market sales by DSM/KISCO were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded these below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

1. Calculation of NV Based on Home Market Prices. We determined price-based NVs for DSM/KISCO as follows. We made adjustments for any differences in packing, and we deducted movement expenses pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We also made adjustments, pursuant to 19 CFR 351.410(e), for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset).

We based home market prices on the packed prices to unaffiliated purchasers in Korea. We adjusted, where applicable, the starting price for discounts and rebates and movement expenses (foreign inland freight and warehousing). We also made COS adjustments, where applicable, by deducting direct selling expenses incurred for home market sales (credit expense and warranty). For comparisons made to EP sales, we made COS adjustments by adding U.S. direct selling expenses. For comparisons made to CEP sales, we did not add U.S. direct selling expenses. No other adjustments to NV were claimed or allowed.

2. Calculation of NV Based on CV. Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those models of rebar for which we could not determine the NV based on comparison-market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based NV on CV. Since there were contemporaneous home market sales of identical merchandise for all U.S. market EP and CEP sales, we did not resort to CV in this investigation.

3. Level of Trade (LOT)/CEP Offset. In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP transactions, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from the respondents about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying LOTs for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction

[4] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of NV.

of expenses pursuant to section 772(d) of the Act.

In this investigation, DSM/KISCO reported that it sold subject merchandise to three types of customers (distributors, end-users, and government entities) in the home market. Further, it indicated that, for each of the two originally reported channels of distribution, it provided the same types of selling functions (market research, price negotiations, order processing, sales calls, interactions with customers, inventory maintenance, technical advice, warranty services, Korean inland freight, and advertising) at the same levels of intensity for each of the three types of customers. Since all three types of customers received the same selling functions, at the same levels of intensity, we determine that there is a single LOT in the home market. *See* Memorandum from Ronald Trentham to Thomas F. Futtner, Level of Trade Analysis: Dongkuk Steel Mill Co., Ltd. and Korea Iron & Steel Co., Ltd. (*LOT Memorandum*), dated January 16, 2001.

DSM/KISCO also reported that it made EP and CEP sales of subject merchandise to three types of customers (Korean trading companies, U.S. distributors, and U.S. end-users) through four channels of distribution in the U.S. market. The four channels are as follows: (1) sales from DSM directly to unaffiliated U.S. distributors and end-users, (2) sales from DSM to unaffiliated Korean trading companies, who then resold the merchandise to U.S. customers,[5] (3) sales from DSM to DKA, who then resold the merchandise to unaffiliated U.S. distributors and end-users, and (4) sales from DSM to DKI, who then resold the merchandise to DKA, who then resold the merchandise to unaffiliated U.S. distributors and end-users. Further, DSM/KISCO indicated that it provided certain types of selling functions (market research, price negotiations, order processing, sales calls, interactions with customers, inventory maintenance, technical advice, warranty services, Korean inland freight, and advertising) for each of the three types of customers. We examined the types of selling functions provided in each of the four U.S. market channels of distribution, and the level of intensity with which each function is provided, and determined, based upon the selling functions performed, that EP sales and CEP sales are sold at two different LOTs, specifically, LOT1 for EP sales, and at a more remote level of selling activity, LOT2, for CEP sales. *See LOT Memorandum.* We then compared LOT1 (the LOT for EP sales) to the home market LOT and found that EP sales are provided at a different LOT than the home market sales. We also compared LOT2 (the LOT for CEP sales) to the home market and found that CEP sales are provided at the same LOT as the home market transactions. Thus, no LOT adjustment is warranted for CEP comparisons.

Section 773(7)(A)(ii) of the Act states that the Department will grant a LOT adjustment only ''if the difference in the level of trade is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined.'' Although we find that the U.S. market LOT1 (EP sales) is different from the home market LOT, we are unable to calculate ''a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined'' because there is only one LOT in the home market. Thus, in this instance, we have also not granted DSM/KISCO a LOT adjustment to NV for EP comparisons.

Section 773(a)(7)(B) of the Act provides for a CEP offset to NV when NV is established at a more advanced LOT than the LOT of CEP. Since, in this instance, we have found that the U.S. market LOT2 (CEP sales) is the same as the home market LOT, we have not granted DSM/KISCO a CEP offset to NV. For a further discussion, *see* LOT Memorandum.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determinations.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for Korea when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 135 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of rebar from Korea that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In the case of rebar produced by Hanbo, because of our preliminary affirmative critical circumstances finding, and in accordance with section 733(e) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of rebar produced by Hanbo that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

	Margin (percent)
Manufacturer/exporter:	
Dongkuk Steel Mill Co., Ltd/ Korea Iron & Steel Co., Ltd	21.70
Hanbo Iron & Steel Co., Ltd ...	102.28
All Others	21.70

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in these investigations in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our sales at LTFV determination. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed

[5] DSM did not report the types of U.S. customers to which the unaffiliated Korean trading companies resold the subject merchandise.

within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one rebar case, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

As noted above, the final determination will be issued 135 days after the date of the publication of the preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: January 16, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

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